EY Tax and Regulatory Alert

July 2019

Prepared for ACMA

Contents

Building a better working world

Indirect Tax

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

Judicial Precedents

1. M/s Tata Marcopolo Motors Limited
Vs
The Authority on Advance Rulings in Karnataka Goods and Services Tax

[2019-VIL-194-AAR]

Backgrounds and Facts of the case

- The applicant, M/s Tata Marcopolo Motors Ltd., is a company incorporated under the Companies Act, 1956 and is registered under the Goods and Services Act, 2017. The applicant is engaged in the business of building and mounting of body on the chassis of different models of buses.

- The question of the applicant is covered under Section 97 (2) (a) of CGST Act 2017. The company has sought advance ruling in respect that whether the activity of building and mounting of the body on the chassis by the Applicant will result in supply of goods under HSN 8707 or supply of services under HSN 9988.

- The Applicant, for building and mounting of the body, procures various inputs such as steel sheets, square tubes, seats, glasses, wiring harness, fittings inside body, paints, FRP (Fiber-reinforced plastic), Air conditioner, Automobile parts on payment of appropriate GST and claims input tax credit on the same. They undertake the body building activity and fabrication works using aforesaid inputs and their own machines, manpower and other facilities.

- The applicant receives the chassis of the buses from OEMs / Retail customers (Sender) on free of cost basis, under the delivery challan. Hence ownership of the chassis always remains with sender (Principal).

- The Applicant submits that they can perform fabrication, welding, painting and fitment process / activities independently and can start the building activity even before the chassis is made available by the sender. In case of some standard type of vehicle the whole process of body building and mounting can be completed within 6 days. Then the fully built vehicle will be returned under the tax invoice to the sender, charging 28% GST, on treating of the activity of building and mounting of the body on the chassis as supply of goods i.e. body, under HSN Code 8707. The cost of the goods components is approximately 65% of the cost of full body.

- The applicant also submitted that the supply of ready built body and the activity of mere mounting the body on chassis supplied by the owner amounts to supply of goods and merits classification under HSN 8707, attracting 28% of GST - The activity of step by step building of the body on the chassis supplied by the owner using their own inputs & capital goods amounts to supply of service and merits classification under SAC 9988, attracting 18% of GST.

- The Applicant, further quoting the provisions of “Composite Supply” given under Section 2(30) of the CGST Act, submits that, the principal supply would be of building the body

and the activity of mounting the body would be incidental to it and thereby the whole transaction would be treated as Supply of goods (i.e. body). If the activity of mounting the body on chassis is not "naturally bundled" with the activity of building of the body, it can't fall under the ambit of "Composite Supply".

- The Applicant, further quoting the meaning of "Mixed Supply" in terms of Section 2(74) of the CGST Act 2017, submits that if the activity of building the body and mounting the body is considered as "Mixed Supply", then the supply attracts the higher rate of GST i.e. supply of body (goods) attracting 28% of GST.

- The title and ownership of all the inputs used for building the body remains with the Applicant and the sender will not be liable for any loss that may happen to the inputs till the body built is mounted on the chassis. Therefore, the contractual agreement between the sender and the Applicant is for supply of body but not the services of building the body and hence the instant activity becomes supply of goods and not the supply of services.

Discussions and Findings of the case

- Upon investigation it was found that in the instant case two situations arise. In the first scenario the body is built without the physical presence of the chassis. The dimensions of the chassis and the required design of the body are known and the body is fabricated accordingly. Such ready built body is thereafter mounted on the chassis as and when provided by the owner. In the second scenario the chassis is provided by the owner and the applicant carries out the building and mounting of the body on the chassis in different steps as enumerated by the applicant. In both the situations the applicant uses their own inputs and capital goods.

- The question raised by the applicant had been raised by several other body builders and after examination of the various issues, the CBIC issued a clarificatory Circular in the matter. The Circular No. 52/26/2018 – GST dated 09-08-2018, clarifies the applicable GST rate for bus body building activity based on the following two situations.

  - Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

  - Bus body builder builds body on chassis provided by the principal for body building and charges fabrication charges (including certain material that was consumed during the process of job work).

- The first situation, being the supply of goods, attracts GST @28% and the second situation, being the supply of service, attracts GST @18%.

- It is evident from Para 12.2(b) of the said Circular that if the body is built on the chassis provided by the principal and the fabrication charges, including certain material consumed during the process of job work, have been charged then the activity amounts to Supply of Service and attracts 18% GST. In the instant case in terms of the process explained by the applicant the body is built on the chassis provided by the owner.

- One more situation is envisaged by the applicant which is likely to have a bearing on the rate of tax applicable in the matter. In

Annexure 'A', para 2.3(e) the applicant has brought forth that they can start building the body even before the chassis is made available by the sender.

- The applicant does not need the goods of another person for the process of manufacture of the body. Accordingly, the provisions of Para 3 of Schedule II of the CGST Act, 2017 would not apply in the matter and instead the case would evidently fall under Para 1 of Schedule II of the said Act.

- Besides the manufacture/fabrication of the body the applicant would also be required to mount the same on the chassis. Thus, there appear to be two supplies in the matter, one being the supply of goods in the form of body and the second being supply of service of mounting/fixing the body on the chassis and minor activities like fixing seats etc.

- Hence the activity shall attract classification under HSN 8707 and the activity would be liable to GST @ 28 % in terms of Serial number 169 of Schedule IV of Notification. No 1/2017-Central Tax (Rate) dated 28.06,2017, effective from 01.07.2017.

Ruling

- The supply of ready built body and the activity of mere mounting the body on chassis supplied by the owner amounts to supply of goods and merits classification under HSN 8707, attracting 28% of GST.

- The activity of step by step building of the body on the chassis supplied by the owner using their own inputs & capital goods amounts to supply of service, in terms of Circular dated 9.8.2018 and merits classification under SAC 9988, attracting 18% of GST.

2. Champa Nandi, carrying on business under the trade name M/s Industrial Handling

v/s

The Union of India and Others

[2019-VIL-173-AAR]

Backgrounds and Facts of the case

- The Applicant, stated to be leasing out cranes and equipment and locomotives, provides diesel-hydraulic locomotives to several companies for placement/shunting of rakes/wagons/oil tankers from the siding or terminal of the Indian Railways to the factory premises of the company and vice versa.

- The Applicant seeks a ruling on the classification of the above service and the applicable rate of tax under Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1135 - FT dated 28/06/2017), as amended from time to time [hereinafter collectively referred to as Rate Notifications (Service)].

- The questions raised by the Applicant involve classification to ascertain the applicability of the Rate Notifications (Service). The questions are, therefore, admissible for advance ruling under section 97 (a) & (b) of the GST Act.

- The concerned officer from the Revenue submits that the question raised in the application is not pending or decided in any proceedings of the GST Act. As such, he does not object to the admissibility of the application. The application is, therefore, admitted.

- The Applicant submits that she supplies cranes and equipment on monthly rental basis and charges GST @ 18%, the service is classified as leasing or rental services concerning construction machinery and equipment with or without operator' (SAC 997313). Likewise, she leases out diesel-hydraulic shunting locomotive inter alia to M/s Damodar Valley Corporation, Andal, Burdwan (hereinafter the DVC), which has objected to charging GST at 18% rate.

- The DVC refers to Circular No. Books/GST/17-18/pt I dated 19/07/2017 of East Central Railway. In the said circular the railway authority informs that charges for terminal access, shunting, stabling, haulage or detention is classifiable under 'leasing or rental services concerning transport equipment with or without operator' (SAC 997311) and taxable at the rate applicable to the goods. As diesel locomotives are taxable @ 5% under Sl. No. 236 of the Rate Notifications (Goods), the service mentioned above is taxable @ 5% as well.

- The Applicant, however, maintains that a diesel-hydraulic shunting locomotive is not transport equipment. Furthermore, services provided by the Indian Railways are not like the one she provides to the DVC. The shunting locomotives are not hauling at a stretch but moving to and from the full/empty coal rakes between the DSTPS Siding, the DVC and Andal Railway Station. It is akin to railway pushing and towing service (SAC 996731).

- The concerned officer from the Revenue submits that the Applicant's service of 'hiring of diesel-hydraulic shunting locomotive on monthly hire basis' is classifiable as 'railway pushing and towing service' (SAC 996731) and taxable @ 18% under Sl. No. 11(ii) of the Rate Notifications (Service).

Discussion and findings of the case

- The activities the supplier of service is expected to perform may vary from contract to contract. For example, the lessor of transport equipment with or without operator may provide the recipient complete operational control. He provides the equipment in the custody and possession of the recipient, who can employ it whenever and wherever he needs it. On the other hand, the recipient may hire the equipment for a specific activity. The supplier may retain a good deal of control over the equipment and may be required to perform activities, the scope of which is defined by the purpose for which the recipient has hired the equipment. The two contracts are different. The former is plain leasing and renting contract. The latter is a complex one. The supplier is not only providing the equipment on lease but also performing the activities for which the equipment has been taken on lease. The essence of the contract is defined by the extent to which the supplier is engaged in performing those activities. Classification of the service provided in such complex umbrella contract is, therefore, entirely dependent upon the terms of the specific contract.

- The DVC issues Work Order no. CE/DSTPS/T/1021(17)/ARCLOCO/Fuel/WO/903 dated 07/10/2017 for the hiring of diesel shunting locomotive on lease for placement/shunting of rakes at DSTPS Siding, DVC, Andal. The Scope of Works annexed to the Work Order includes round the clock manning and operation of locomotives for movement of empty and loaded wagons/rakes at DSTPS, DVC, Andal Siding as and when required.

- The Applicant shall operate the locomotives inside the plant, arrange the placement of wagons over Wagon Tippler/Track Hopper, form the empty rakes and shunt them to empty lines and do any other work related to placement/shunting with Loco. She shall provide one driver and one shunt man for the Loco round-the-clock, who will move the Loco and look after the locomotive, couple/de-couple the Loco/Wagons and repeat the signal aspects. The Applicant shall arrange for necessary permission for route and first-time placement of Loco at DSPTS site and bear the related cost. She will also supply the necessary workforce for operation and maintenance of the Loco and shall be responsible for the safety of her men at the worksite. She will also bear the cost of insurance of the Loco and her personnel.

- The term "railways" is not defined in the GST Act. It, however, is defined under section 2(31) of the Railways Act, 1989Art 366(20) of the Constitution excludes from the ambit of 'railway' only (a) a tramway wholly within a municipal area and (b) any line of communication wholly situates in one State and declared by Parliament by law not to be a railway. The Parliament excludes by law, apart from the tramways, the lines of rails mentioned under section 2(31)(ii) of the Railways Act, 1989, being rails built solely for recreation. The term 'public carriage', therefore, cannot be given any meaning that may add more exclusion than specifically provided under section 2(31)(ii) of the Railways Act, 1989. The DVC is the owner of the DSTPS Railway Siding. It is meant for the carriage of coal to DSTPS. The purpose of the carriage of goods is, therefore, not recreation, but producing public goods like electricity. It is, therefore, not excluded under section 2(31)(ii) of the Railways Act, 1989.

- Transportation of coal from Andal Station to DSTPS Siding is, therefore, railway transport, and the service of moving empty or loaded wagons/rakes at DSTPS Siding is nothing but the supporting service of railway pushing and towing (SAC 996731). It describes the nature of the Applicant's service more specifically than 'leasing or rental services concerning transport equipment, including containers with or without operator (SAC 997311).

Ruling

- The Applicant's service to the DVC, as described in para no. 4.1, is classifiable as 'railway pushing and towing service' (SAC 996731) and taxable @ 18% under Sl. No. 11(ii) of Notification No. 11/2017 - Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1135 - FT dated 28/06/2017), as amended from time to time.

- This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

3. M/s Rossi Gear Motors India Private Limited

Vs

Tamil Nadu Advance Ruling Authority

[TS-516-AAR-2019-NT]

Backgrounds and Facts of the case

- The applicant is a manufacturer of Gearboxes and Gear reducers. These Gearboxes are assembled by the applicant with the Electrical Gearboxes and Electric Motors. Gear reducers and gear boxes are imported from their related party. Both are assembled in India by the applicant depending on the specifications given by the buyers. Gear

Motor is a single unit consisting of gear box and electric motor, coupled and integrated.

Three Matters on which advance ruling is sought

- Gear Motors supplied by applicant are to be classified under which HSN?

In the case at hand, gear reducers or gearboxes are used to increased torque while reducing the speed of a prime mover output shaft. The electric motor is an electrical machine that converts electrical energy into mechanical energy. The applicant is supplying Gear motor which is a single component that integrates a gear reducer with an electric motor. In this instance geared motors combine two machines gearboxes and electric motor to provide the function of converting electrical energy to mechanical energy in a controlled manner giving control over the torque generated in moving any attached transmission shaft. This is also supported by the HSN Explanatory Notes to Chapter 8483 and 8501. Further, the explanatory notes to Chapter 8501 specifically states that 'Motor remain classified here even when they are equipped with gear or gear boxes…'. In the purchase order and sale invoice of the applicant it is seen that the supply is a geared motor which is a single supply and not two individual supply of gear boxes and electric motors. They are fitted together, assembled and supplied by the applicant. Therefore, this is not a mixed supply as claimed by the applicant.

In view of the above it was held that 'Gear Motor is rightly to be classified under CTH 8501.

- Whether the gear motors can be considered as 'gears' and 'gearings'?

The applicant has not elaborated the question. From the submission it is inferred that 'gears and gearings' without motors are mentioned as 'Gears and Gearings' while gearbox with motor are termed as 'Gear motors'. However, section 97(2) of the CGST Act/ Tamil Nadu GST Act(TNGST) which gives scope of Advance Ruling Authority i.e., the question in which the advance rulings can be sought. The acts limit the Advance Ruling Authority to decide the issues earmarked for it under section 97(2) and no other issue can be decided by the Advance Ruling Authority. The question raised does not fit in any of the clause (a) to (g) above and therefore not answered for the reason not within the ambit of this authority.

- Whether the rate of CGST/SGST as per notification no. 1/2017-CT (Rates) and GO (MS) No: 62 dated 29.06.2017 is

  a) 9% as per schedule-III (SL.No.372) or
  b) 9% as per schedule-III (SL.No.369A) or
  c) 14% as per schedule-IV (SL. No:135)

As discussed above, the 'Gear Motors' are classifiable under CTH 8501. Therefore the rate applicable to 'Gear Motors' under CTH 8501 is 9% CGST/SGST as per Sl.no. 372 of Schedule III of Notification No. 01/2017-CT(Rate) dated 28.06.2017 and Notification No. II (2)/CTR/532(d-4)/2017 vide G.O. (Ms) No.62 dated 29.06.2017 as amended.

4. M/s Rohan Coach Builders
v/s
Authority for Advance Ruling- Madhya Pradesh Goods and Service Tax

[2019-VIL-188-AAR]

Backgrounds and facts of the case

- The Applicant is registered with the Department having GSTIN 23AABFR5884Q1ZJ for Office/Sale Office, Factory/Manufacturing.

- M/s Rohan Coach Builders, intends to execute a contract of fabrication of bus body to be mounted on the chassis of the contractee. As per the term of the contract chassis of a bus will be delivered by the OEMs (Principal) for the purpose of carrying out the body building on the chassis on delivery challan. The Applicant shall procure various goods such as metal sheets, plywood, seats, glasses, alluminium sections etc. as inputs for fabricating the bus body besides fabrication services. Once the Bus body is built and mounted on the chassis by the Applicant, the vehicle will be sent back to the OEMs/customers after raising tax invoice towards body building charges on which GST will be charged separately.

- The applicant will claim the credit of GST paid on the material used as input against output liability of GST on body building activity carried out by it. The consideration received by the applicant will be towards the manufacturing of the bus body on the chassis supplied by the Principal.

- In view of the above activity done by the applicant, the applicant has approached the Authority seeking ruling on the question given below

Question raised before the authority

- In the Application the question raised by the Applicant as whether the activity of building and mounting of the body by the applicant on the chassis provided by the Principle will result in supply of goods under HSN 8707 or supply of services under HSN 9988 taxable @ 18% irrespective of end use by the principle who shall effect the sale of Bus.

- However, at the time of hearing the Applicant made it clear that Advance Ruling is sought only in relation to fabrication of bus body on the chassis to be supplied by the OEMs (Principal) on delivery challan or any other owner of the chassis on which bus body will be fabricated by collecting job work charges including inputs required for such fabrication work.

Discussion and findings of the case

- The ownership of the chassis will not be transferred at any stage by the OEMs, body built thereon will be in the nature of "job work" because the services of job worker includes using own inputs in the process in addition to the goods received from the principal hence it is taxable under SAC 998881 — "Motor vehicle and trailer manufacturing services" and under entry no. 26(ii) as "Manufacturing services on physical inputs (goods) owned by other" it is taxable @18% as the pre dominant supply is "Bus Body Building". Such manufacturing of body by carrying out fabrication work not taxable under HSN 8707 - "Bodies (including cabs), for the motor vehicles of headings 8701 to 8705".

- Mr. Nagar further stated that the petitioner shall fabricate bus body only on the chassis to be supplied by the owner, specimen copies of purchase order dt. 24.01.19 & 18.02.19 issued to another vendor by PSN Automotive Marketing Pvt. Ltd., Bangalore, an authorized dealer of "Eicher", the manufacturer of chassis are annexed for kind perusal. The applicant has requested for advance ruling only in relation to fabrication of bus body on the chassis to be supplied by the OEMs (Principal) on delivery challan or any other owner of the chassis on which bus body will be fabricated by collecting job work charges including inputs required for such fabrication work.

- It was further submitted that the ownership of the chassis will not be transferred at any stage by the owner of the chassis and body built thereon will be in the nature of "job work" covered by entry no. 26(ii) of SAC 99881 taxable @18% on the invoice raised by

- First, we must look upon the nature of work to be done by the applicant as per the submission the applicant intends to execute a contract of fabrication of bus body to be mounted on the chassis of the contractee.

- In the instant case the Applicant shall procure various goods such as metal sheets, plywood, seats, glasses, aluminium sections etc. as inputs for fabricating the bus body besides fabrication services. Once the Bus body is built and mounted on the chassis by the Applicant, the vehicle will be sent back to the OEMs/customers after raising tax invoice towards body building charges on which GST will be charged separately. At no stage the ownership of the chassis will be transferred by the OEMs to the Applicant. The applicant will claim the credit of GST paid on the material used as input against output liability of GST on body building activity carried out by it. The consideration received by the applicant will be towards the manufacturing of the bus body on the chassis supplied by the Principal.

- Now we come to the question raised by the Applicant as whether the activity of building, fabricating and mounting of the bus body by the applicant on the chassis provided by the Principle will result in supply of goods under HSN 8707 or supply of services under HSN 9988 taxable @ 18% irrespective of end use by the principle who shall affect the sale of Bus.

- We Find that the activity and question raised before us has been suitably clarified and dealt with Circular no. 52/26/2018-GST issued by Government of India, Ministry of Finance, Department of Revenue dated 9th August, 2018.

Ruling

- In respect of the question raised by the applicant we hold that on fabrication of bus body on the chassis to be supplied by the OEMs (Principal) on delivery challan or any other owner of the chassis on which bus body will be fabricated by collecting job work charges including inputs required for such fabrication work and in no case the ownership of the chassis will be transferred by Principal to the applicant will be taxable under SAC 998881 - "Motor vehicle and trailer manufacturing services" and under entry no. 26(ii) as "Manufacturing services on physical inputs (goods) owned by other" it is taxable @18% (9% under CGST and 9% under SGST Act).

- This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

Key Indirect Tax updates

This section summarizes the regulatory updates for the month of July 2019

1) GST Portal Update

- Payment: Utilization of IGST Credit (implemented in Form GSTR 3B only)

- Taxpayers filing Form GSTR 3B will have to utilize IGST credit towards payment of

Integrated tax, and the amount remaining, if any, may be utilized towards the payment of Central tax and State tax or Union territory tax, in any order.

- This can be done provided that the input tax credit on account of Central tax, State tax or Union territory tax shall be utilized towards payment of Integrated tax, Central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of Integrated tax has first been utilized fully.

2) Notification No.30 /2019 – Central Tax dated 28th June 2019: Exemption from filing Annual Returns by OIDAR service Providers

- Exemption from furnishing of Annual Return / Reconciliation Statement in Form GSTR-9 / GSTR-9C for suppliers of Online Information Database Access and Retrieval Services (OIDAR services).

- The said persons shall not be required to furnish –

- Annual return in FORM GSTR-9 under section 44(1) of the CGST Act read with rule 80(1) of the CGST rules.

- Reconciliation statement in FORM GSTR-9C under section 44(2) of the CGST Act read with rule 80(3) of the CGST rules.

3) Notification No. 32/2019 – Central Tax dated 28th June 2019: Extension of time limit for filing GST ITC-04

- Time limit for furnishing the declaration in FORM GST ITC-04 of the CGST rules, in respect of goods dispatched to a job worker or received from a job worker, during the period from July 2017 to June 2019.

- Extended till 31st August 2019

4) Extension of due date of GSTR-7 for October 2018 to July 2019

- The time limit for furnishing the return by a registered person required to deduct tax at source under the provisions of section 51 of the CGST Act in form GSTR-7 of the CGST Rules, 2017 for the period October 2018 to July 2019

- Extended till 31st August 2019

5) Last Date for Annual Return for the period from the 1st July 2017 to the 31st March 2018

- Removal of Difficulties Order No. 6/2019-Central Tax dated 28th June 2019

- Last Date for furnishing of the annual return under section 44(1) of the CGST Act, and reconciliation statement for the period from the 1st July 2017 to the 31st March 2018

- Extended to 31st August 2019

- Explanation Clause after section 44(2) shall read as- For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July 2017 to the 31st March 2018 shall be furnished on or before the 31st August 2019

6) Amendment to CGST Rules, 2017

- Notification No. 31/2019 – Central Tax dated 28th June 2019

- Rule 10A on Furnishing of Bank Account Details inserted: Taxpayers are required to furnish bank account information on the portal within 45 days of the grant of registration or the due date of GSTR-3B, whichever is earlier.

- Effective Date- 28th June 2019

- Violation of Rule 10A - GST registration is liable to be cancelled of a person not furnishing the details required as per Rule 10A

- Rule 21 of the CGST Rules, 2017

- Clause (d) i.e. "violates the provision of rule 10A" inserted in rule 21 of CGST Rules, 2017

- Effective Date- 28th June 2019

7) AAR: Last date to avail the input tax credit ('ITC') in respect of invoices pertaining to FY 2017-18

Submissions by the writ-applicant:

- Section 16(4) of the CGST Act provides that a registered person shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under Section 39 for the month of September following the end of the financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier;

- Rule 61(5) of CGST Rules provides that where the time limit for furnishing of details in Form GSTR-1 under section 37 and in Form GSTR 2 under section 38 has been extended and the circumstances so warrant, the Commissioner may, by notification specify the manner and conditions subject to which the return shall be furnished in GSTR 3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner;

- Bare perusal of Rule 61 of CGST/GGST Rules would indicate that the return prescribed in Section 39 is a return required to be furnished in Form GSTR-3 and not Form GSTR-3B;

- In view thereof, the last date for availing the input tax credit relating to invoices issued during the period from July 2017 to March 2018 is the last date for filing of the return in form GSTR-3 and not GSTR-3B.

Observations and Ruling of Court:

- The return in Form GSTR-3B is only a temporary stop gap arrangement till due date of filing the return in Form GSTR-3 is notified - the Notification No.10/2017 Central Tax dated 28th June 2017 which introduced mandatory filing of the return in Form GSTR-3B stated that it is a return in lieu of Form GSTR-3;

- However, the Government, on realizing its mistake that the return in Form GSTR-3B is not intended to be in lieu of Form GSTR-3, rectified its mistake retrospectively vide Notification No.17/2017 Central Tax dated 27th July 2017 and omitted the reference to return in Form GSTR-3B being return in lieu of Form GSTR-3;

- Return in Form GSTR-3B was not introduced as a return in lieu of return required to be filed in Form GSTR-3. Thus, the clarification provided in the impugned press release could be said to be contrary to Section 16(4) of the CGST Act/SGST Act read with Section 39(1) of the CGST Act/SGST Act read with Rule 61 of the CGST Rules/SGST Rules.

- In light of the aforesaid judgement, taxpayers should be allowed to avail the credit of invoices

pertaining to financial year 2017-18 till the due date of furnishing of the return in Form GSTR-3 for the month of September 2018 or furnishing of the annual return for financial year 2017-18, whichever is earlier.

Direct Tax

This section of tax alert summarizes the Direct tax updates for the month of July 2019

Key Direct Tax Developments

1. Union Budget passed by Rajya Sabha

The Union Budget was announced by the Finance Minister on 5 July 2019. Some of the relevant direct tax updates in the Final budget 2019 for automotive sector are as follows:-

- Corporate tax rate of 25% has been extended for companies having turnover up to INR 400 crores in FY 2017-18 for computing tax payable by such companies in FY 2019-20.
- Section 80EEB has been introduced to provide deduction of interest payable on loan taken from any financial institution for purchase of EV subject to maximum of INR 1.5 Lakhs from FY 2019-20.
    - Deduction can only be claimed if the loan has been sanctioned by the financial institution between April 01, 2019 and March 31, 2023. It also provides that no deduction under any other provision of the Act is allowed if any deduction is claimed in this section.
    - Term "EV" has been defined to mean any vehicle which is powered by electric motor satisfying following condition:-
        - The traction energy is supplied exclusively by traction battery installed in the vehicle; and
        - Vehicle has such electric regenerative brake system which during braking provides for conversion of kinetic energy into electric energy
- Scheme to be announced for incentivizing the setup of mega manufacturing plants or Fabrication (FAB), Solar Photo Voltaic cells, Lithium storage batteries, Solar electric charging infrastructure, Computer Servers, Laptops, etc. and provide them investment linked income tax exemptions under section 35 AD of the Income Tax Act, and other indirect tax benefits.

2. CBDT extends due date for filing of return by Individuals and HUF to 31 August 2019

CBDT has through order dated 23 July, 2019 has extended the due date of filing return of income with respect to the assessee liable to file their tax return by 31 July 2019 to 31 August 2019. This order is well awaited considering that the due date for issuance of Form 16 was extended by 25 days last month to 10 July.

Source: CBDT order 225/157/2019/ITA.II dated 23 July 2019

3. India-China DTAA amended to include MLI proposals

Government of India notifies amended DTAA with China effective from June 5, 2019. Some of the key amendments are as follows:-

- Provision on taxation of Fiscally transparent entities added in Article 1: Covered persons of amended DTAA.
- In tie-breaker situations for determination of residential status of the person under the treaty, MAP procedures introduced to determine the residential status in case of dual resident entities.
- Under Article 5, for installation / construction PE, the amended treaty provides for project aggregation for PE determination as an anti-fragmentation rule.
- Under Article 5, rolling period concept for determination of service PE introduced after which the days threshold has to be seen on continuous basis.
- The definition of preparatory and auxiliary activities has been amended to exclude delivery of goods /merchandise.

- With respect to Agency PE the conditions are amended in lines with MLI to include condition of habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise.

- New Article 27A introduced to incorporates Principle Purpose Test for preventing treaty abuse.

- Under Article 11, the language has been amended to grant benefit of no taxation from "interest derived by Government" to "interest paid to the Government".

Source: *CBDT Notification No. 54/2019*

4. Madras HC upheld that since there is a unity of control and management of the composite business of the Assessee, the Assessee would definitely qualify for deduction of the expenditure incurred by it

Background and facts

- Section 28(i) of the ITL provides that the profits and gains of business which was carried on by the Assessee at any time during the previous year shall be chargeable to tax under head "Profits & Gains of Business & Profession". The section accordingly requires that the Assessee to carry on the business after setup in order to compute income under this head.

- In the instant case, the Assessee was incorporated for bundle of activities viz. designing, manufacturing, distributing, selling, source of after sales engineering services and research and development of commercial vehicles and related products and components for domestic Indian and Overseas Market.

- The Assessee has commenced/performed activities relating to designing of commercial vehicles and related products, R&D, buying and selling of parts and it was in process of construction of factory building for manufacture of commercial vehicles.

- The AO while passing the assessment order has disallowed the expenses incurred by the Assessee by pointing out that the Assessee have not yet started commercial operations, i.e. manufacture and sale of commercial activities and that the assessee is involved only in activities towards setting up of its facility and operation with support of its group companies.

- The assessee submitted that it has started its R&D activities, being one of the main activities, by setting up of R&D Centre. However, the AO stated that R&D is one of the activities of the company, the main revenue generating activity is to design, manufacture and sell commercial vehicles in Indian domestic markets and such activity has not commenced so far.

- Therefore, the AO held that since the income from the main activity has not commenced, the corresponding expenditure is not allowable.

CIT(A) observations

- The CIT(A) allowed the assessee's appeal. The CIT(A) noted that the assessee had two limbs of business activity; first relating to setting up of manufacturing facility for commercial and heavy vehicles; and second business relating to import and sale of readymade light and commercial vehicles.

- The CIT(A) held that the assessee had already commenced activities relating to design and also the pre-activities essential for commencement of manufacture in the assessment year 2009-10 itself and therefore, held that the finding of the Assessing Officer on this ground is not based on facts on record.

- On facts, the CIT(A) found that none of the expenditure debited to P&L account are towards setting up of the manufacturing facility and they relate to other business activity listed in the Memorandum of Association.

Revenue's contention before the Madras HC

- The Director's report of the assessee for the relevant previous year and held that the assessee was yet to start commercial production and no revenue was generated by it. Further, it held that there is no identifiable item shown in the profit and loss account or in the capitalised expenditure which can substantiate the claim of any R&D activity. Neither has any revenue been generated from R&D activities and the fact of the matter is that the assessee has just completed the process of registering the lease of the land and started set up of its plant in such land during the relevant previous year.

Taxpayers contention before the Madras HC

- It is submitted that the AO held that the assessee has not commenced commercial production, that is, manufacture and sale of vehicles and therefore, the expenses debited to the profit and loss account were not allowable. Nowhere, the AO stated that the business of the assessee was not set up and that the provisions relating to computation of income under Section 28 read with Section 3 of the Act was not applicable.

- It is further submitted that under Section 28 of the Act, there is an aggregation of all activities of the assessee to compute the profits and gains of business. It is, thus, submitted that the date of setting up of the business of the assessee having attained finality for the assessment year 2009-10, cannot change in a later year. Further, commercial production, that is, manufacture of sale of vehicles is not relevant for determining as to whether an assessee has set up his business or not.

Madras HC's ruling

- There was no dispute raised by the AO with regard to the date on which the assessee had set up its business.

- In terms of the Memorandum of Association of the assessee, it was incorporated for a bundle of activities, viz., designing, manufacturing, distributing, selling, source of after sales engineering services and research and development of commercial vehicles and related products and components for domestic Indian and Overseas Market.

- The HC endorsed the view of the CIT(A) in holding that the assessee had commenced, performed activities relating to designing of commercial vehicles and related products R&D, buying and selling of parts and in the process of construction of factory building for manufacture of commercial vehicles and accordingly, the business of the Assessee had been set up in the previous year.

- The HC hold that the assessee is in a composite business and when it is established that there is a unity of control and management and common fund apart from other features, no disallowance of expenses can be made.

Source: *Daimler India Commercial Vehicles (P.) Ltd. v. DCIT [2019 107 taxmann.com 243 (Mad)]*

Regulatory

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

1. **RBI amends the Foreign Exchange Management (Deposit) Regulations, 2016 ('Deposit Regulations')**

- Pursuant to the amendment, the sub-regulation (3) of Regulation 6 of the Deposit Regulations, permitting Indian Companies to accept deposits by issue of commercial paper to a non-resident Indian/person of Indian origin or a foreign portfolio investor has been deleted.

Source: *FEMA Notification no. G.S.R. 498 (E) dated 16 July 2019*

2. **RBI replaces the e-mail based reporting system for submission of the Foreign Liabilities and Assets (FLA) return with the web-based system through an online portal**

- In terms of the extant control exchange framework, all Indian companies and LLPs which have received foreign direct investment (FDI) and/or made Overseas Direct Investment (ODI) in the previous year(s) including the current year, are required to file the annual return on FLA in the soft form through an e-mail to the RBI by July 15 of every year.

- With the objective to enhance the security-level in data submission and further improve the data quality, RBI has replaced the present e-mail based reporting system for submission of the FLA return with the web-based system online reporting portal named Foreign Liabilities and Assets Information Reporting (FLAIR) system.

- RBI would provide a web-portal interface https://flair.rbi.org.in to the reporting entities for submitting "User Registration Form" (containing entity identification and business user details, where LLPs and AIFs will no longer required to use dummy CIN). The successful registration on web-portal will enable users to generate RBI provided login-name and password for using FLA submission gateway and would include system-driven validation checks on submitted data.

- The form will seek investor-wise direct investment and other financial details on fiscal year basis as hitherto, where all reporting entities are required to provide information on FATS related variables (it was mandatory only for subsidiary companies earlier). In addition, the revised form seeks information on first year of receipt of FDI/ODI and disinvestment.

- Reporting entities will get system-generated acknowledgement receipt upon successful submission of the form.

- FLAIR system shall have revision to revise the data, if required, and view/download the information submitted.

- Entities can submit FLA information for earlier year/s after receiving RBI confirmation on their request email.

- The existing mechanism of email-based submission of FLA forms will be discontinued.

- The said reporting mechanism will come into force with immediate effect and would be applicable for reporting of information for the year 2018-19.

- Further, in view of the change in reporting platform for submission of FLA return, RBI has extended the last date for filing the FLA return for 2018-19 from July 15 to July 31, 2019.

Source: *A.P. (DIR Series) Circular No. 37 dated 28 June 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

Ernst & Young LLP

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

For more information, please visit
www.ey.com/india

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/india.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camaca Street, 3rd Floor, Block C, Kolkata - 700016

EY contacts for ACMA Knowledge Partnership:

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