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EDITORIAL

VISION 360: Paving the way for economic recovery...

The Remission of Duties or Taxes on Export Products ('RoDTEP') Scheme had been in the news for a while and in the month of August, 2021 it became fully functional after the Government announced the RoDTEP guidelines and rates.

The announcement of the RoDTEP rates comes in the backdrop of other export schemes such as 'the Districts as an export hub' scheme which is likely to be implemented in the near future. As per the Commerce Secretary, Mr. BVR Subrahmanyam, through such incentives and in view of the global trade recovery, India's exports are expected to record a growth. It is expected that for the first time ever, India would reach the $600 billion mark in cumulative exports (of goods and services) this financial year. Apart from the rise in exports, the high GST collection numbers also indicate economic recovery. With easing out of COVID-19 restrictions, GST revenue at about INR 1.12 trillion remained above the trillion mark for the second straight month after the lockdown resulting from the second wave of the COVID-19 and was 30 % higher than GST revenue in the same month last year. As a positive sign of growth, key manufacturing states such as Maharashtra, Karnataka and Tamil Nadu have shown about 25-35% jump in revenue collection.

The 45th GST Council meeting is slated to take place on 17th September 2021 at Lucknow, U.P. The GST council is likely to deliberate a range of issues such as extension of provision of compensation cess to the states; the presence of inverted duty structure for various sectors, revision of GST rates on COVID essential on which a concessional rate of duty had earlier been provided till September 30, 2021. Auto companies have for years sought a lower GST rate on automobiles, such as cars, bikes and trucks which are currently taxed at 28%. While Revenue Secretary Tarun Bajaj had earlier stated that the Government would be open to discuss change in the GST rate on automobiles, only time will tell if this forms part of the agenda in the upcoming meeting of the GST Council.

Companies across sectors such as steel, real estate, IT, e-commerce continue to receive fresh notices from the tax department denying ITC. Some of the technical issues on which credit is being denied is on account of non-payment of tax by the supplier and mismatch in ITC claimed in Form GSTR 3B vis-à-vis ITC reflected in Form GSTR-2A. In many cases, the full ITC of an assessee is being blocked, if even one supplier in the whole supply chain has failed to deposit tax. Such notices completely disregard the bona fides of the recipient and the fact of absence of collusion between the supplier and the recipient. In the recent past, the Madras High Court, amongst others, while hearing a writ petition, had quashed a departmental order levying the entire tax liability on the Petitioner-recipient even when it had paid the tax component to the seller and directed the Department to take action against the seller, who was actually at fault for not depositing the tax. In other instances, writ petitions have been filed in High Courts challenging the vires of provisions such as Section 16(2)(c) of the CGST Act which, as a pre-condition of claiming input tax credit, place a heavy burden on the recipient to ensure that the supplier has paid tax to the Government. While the final outcome on the issue is awaited, businesses continue to be harassed by tax officer and face wrongful recoveries.

With yet another issue of VISION 360, we, the entire team of **TIOL**, in association with **Taxcraft Advisors LLP**, **GST Legal Services LLP** and **VMG & Associates**, look forward to aid you with key tax and regulatory updates!

Happy Reading!

P.S.: This document is designed to begin with couple of articles peeking into recent tax/regulatory issues followed by stimulating perspective of leading industry professionals. It then goes on to bring to you latest key developments, judicial and legislative, from Direct tax, Indirect tax and Regulatory space. Don't forget to check out our international desk and sparkle zone for some global and local trivia.

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RoDTEP: The Road ahead…

The much-awaited tax remission rates under the Remission of Duties or Taxes on Export Products Scheme ('RoDTEP'/'Scheme') have finally been notified vide Notification No. 19/2015-20 dated August 17, 2021. The Notification lays down guidelines, objectives and operating principles for the RoDTEP Scheme along with rate of remission for products covered under 8555 tariff codes.

Key Highlights of the Scheme

Certain key highlights related to the RoDTEP scheme, as introduced in Para 4.54 to 4.59 of the FTP have been provided as follows.

The Scheme will take effect from 1st January 2021. The objective of the RoDTEP is to refund – (i) duties at Central, State and local level borne on exported goods, including prior stage cumulative indirect taxes on goods and services used in the production of exported products; (ii) indirect taxes, duties and levies in respect of distribution of exported good. No rebate of duties would be provided which are already exempted, remitted or credited. The ceiling rates under the scheme are to be determined by a committee.

It is stated that the scheme would operate in a budgetary framework for each financial year with necessary revisions being made each year. The Scheme is allowed subject to receipt of sale proceeds within permitted time period under the Foreign Exchange Management Act, 1999. The rebate amount in the scheme would be in the form of a transferable duty credit scrip/electronic scrip which will be maintained in an electronic ledger by the CBIC. The e-scrip would only be used for the payment of Basic Customs duty.

The range of RoDTEP rates vary from 0.5% to 4.3 %. The scheme excludes certain sectors like iron & steel, chemical, pharmaceutical etc.

Para 4.55 of the FTP categorizes export transactions/exporters in respect of which rebate under RoDTEP Scheme is not available. These include transactions of export of imported goods (Para 2.46 of the FTP), export through trans-shipment; export of products subject to minimum export price or export duty; supply from DTA to SEZ / FTWZ units; export of products manufactured in EHTP and BTP; export of products manufactured in a warehouse (u/s 65 of the Customs Act, 1962); export of products manufactured or exported availing the benefit of Notification No. 32/1997–Cus dated 01.04.1997; exports for which electronic documentation in ICEGATE EDI has not been generated from non-EDI ports; export of goods which have been taken into use after manufacture.

Availability and quantum of benefit for exporters would be determined at a later point in relation to to – (i) products manufactured or exported against Advanced Authorisation or Duty-Free Import Authorisation or Special Advance Authorisation; or, (ii) products manufactured by a 100% EOU Unit, Free Trade Zone, Export Processing Zone or Special Economic Zone. The inclusion, applicable rates and implementation would be decided on the recommendation of the RoDTEP Committee.

Key Criticism of the Scheme and the Way Forward

The very concept of RoDTEP is to remit costs built in export of goods. A key criticism by the exporters is that RoDTEP rates announced are low and only partially compensate the tax cost while a large portion of the tax cost would still be exported.

RoDTEP rates have not been announced for few goods, including those covered in Chapters 24 to 31 (which includes sectors such as chemical and pharmaceutical), Chapters 72 and 73 (pertaining to the sector of iron and steel). At this point the Ministry of Commerce and Industry

has not officially provided any rationale for such exclusion, but it appears that the Government believes that exporters of goods covered under the said Chapters viz., steel, chemicals and pharma have done well without incentives. In our view, this does not seem to be a credible rationale for denying the exporters RoDTEP and fails to fulfill the objective of the scheme which is to remit tax costs built in export of goods.

The Scheme further delays announcement of remission rate for exporters availing benefit of Advance Authorization, Exports by EOU and SEZ. This is indicative that a lower rate structure may later be announced for these categories. Such dual structure, if announced, would be in complete disregard and would demonstrate non-application of mind of the basic RoDTEP framework, given that Advance Authorization, EOU and SEZ primarily off-set the Basic Customs duty while RoDTEP is meant to remit domestic tax costs. As such, when Basic Customs duty suffered doesn't even form part of the remission structure, then prescribing a lower remission rate on account of off-setting Basic Customs Duty may not be correct.

The guidelines have also excluded products manufactured in EHTP/BTP/bonded warehouse, etc. even though manufacturing activities through aforesaid units suffer large volume of indirect domestic tax costs such as transporter's tax on fuel cost, unrebated electricity duty, stamp duty and tax costs suffered by vendors, etc.

In terms of incentivizing exports, the RoDTEP scheme is no match to MEIS, but what may hurt exporters is that it fails to fulfill the objectives of the scheme on various counts stated above. The announcement of remission rate has only elaborated policy vacuum and has miserably failed in uplifting the exporters sentiment.

IN TERMS OF INCENTIVIZING EXPORTS, THE RODTEP SCHEME IS NO MATCH TO MEIS, BUT WHAT MAY HURT EXPORTERS IS THAT IT FAILS TO FULFILL THE OBJECTIVES OF THE SCHEME ON VARIOUS COUNTS STATED ABOVE!

The current rate has been determined by the Government on the basis of data which had been provided by the industry and the scheme provides for review of rates on an annual basis. We can hope that in the future, the RoDTEP rates are revised to meet the expectation of the industry. The industry is likely to approach the RoDTEP committee for the inclusion of categories of transaction which have not yet been included in the scope of RoDTEP viz exports against advanced authorization, duty free import authorization, special advance authorization, export of goods manufactured in EOU, FTZ, EPZ or SEZ. There is also likely to be a surge in Government advocacy efforts in relation to the various exclusions and limitation that have been introduced in the RoDTEP scheme. Further, taking recourse to judicial intervention for gaining appropriate benefits under the RoDTEP scheme cannot be ruled out.

GST on Transfer of Development Rights – A Magna Challenge!

"...but in this world, nothing can be said to be certain, except death and taxes." Benjamin Franklin, in his letter discussing the Constitution of the U.S.A., noted that taxes are in fact more certain than anything. This is true, in as much as the Revenue authorities attempt to bring within the tax ambit, what is not envisaged even by the Statute! Once such instance is the redevelopment of societies.

In cities, as old and as populated as Mumbai, nearly every building and society is in a dire need to be redeveloped. For any project of redevelopment of a Society, the Supply of Transfer of Development Rights/Floor Space Index ('TDR/ FSI') by the Society to a Developer is treated as follows.

The supply of the TDR/FSI was levied @ 18 % until 01 April 2019 and payable by society under forward charge and the liability would arise at the time of receipt of completion certificate or first occupancy, whichever is earlier. Post 01 April 2019, vide Notification No. 03/2019 Central Tax (Rate) dated 29 March 2019 applicability of GST in a Residential Real Estate Project ('RREP') on supply of TDR/FSI by the society to a developer is as summarised hereunder:

RREP shall mean an REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP, wherein REP means 'Real Estate Project. '

- When the Society provides Development Rights to a Developer, such a transaction is exempt from payment of GST on the condition that the flats constructed by utilization of such TDR/FSI are booked before receipt of completion certificate or first occupancy, whichever is earlier;

- Accordingly, if there are any flats which remain un-booked on the date of receipt of completion certification or first occupancy, GST shall be payable at the rate of 18% on the value of TDR proportionate to the carpet area of un-booked flats subject to maximum 1 % / 5% of the value of such un-booked flats;

- The liability to pay GST shall arise at the time of receipt of completion certificate or first occupancy, whichever is earlier and payable by the Developer under RCM;

- The total taxable value of TDR/ FSI will be equal to the rate of the flats sold to independent buyers nearest to the date of development agreement.

Analysis:

In view of the above, it can be seen that the primary question that arises is whether the transfer of TDR amounts to supply and whether the same shall be liable to applicable GST. In this regard, it would be pertinent to note that as per Section 9 of the CGST Act, GST shall be levied on all intra-state supply of goods or services or both. Section 2(52) of the CGST Act defines the term 'goods' as "every kind of moveable property other than….." Further, 'service' as defined under Section 2(102) of the CGST Act covers "anything other than goods, ……... "

Accordingly, the next question which comes for consideration, is what is 'movable property.' The said term has not been defined under CGST Act. It would be pertinent to note that according to the Sale of Good Act, 'property' means the general property in goods, and not merely a special property. While the definition of 'goods' includes every kind of movable property within its ambit, the definition of 'property' says that it includes not merely special property, but general property in goods as well.

In view of the above, the relevant question that arises is that if service covers anything other than goods, then does

this mean that immovable property is a service and hence liable for GST and - if yes, whether TDR's can be considered as an immovable property.

Immovable Property

It would be pertinent to note that the term 'immovable property' has not been defined under GST law. The General Clauses Act, 1987 defines the term as to include land, **benefits to arise out of land**, and things attached to the earth, or permanently fastened to anything attached to the earth. In order to further understand the term 'benefits to arise out of land', the interpretations of the SC on the various judicial rulings must be read as under:

In the case of **Anand Behera [(1955) 2 SCR 919]**, the SC had held that lake is an immovable property and therefore the petitioner's right to enter in that estate, which he does not own and take away fish from the lake is a 'Profit a Prendre' and in India it is regarded as a benefit to arise out of the land and hence it is immovable property. Similarly, in the case of Shantabai vs. State of Bombay **[AIR 1958 SC 532]**, it had been held that right to enter upon land and cut trees is a benefit arising out of land.

TDRS ARE THE BENEFITS ARISING OUT OF THE LAND AND THE SAME IS AN IMMOVABLE PROPERTY. HOWEVER, IT MAY BE NOTED THAT ALL IMMOVABLE PROPERTIES ARE NOT LIABLE FOR GST, AS SUPPLY OF SERVICE UNDER GST LAW!

In light of the above judgements, it can be stated that TDRs are the benefits arising out of the land and the same is an immovable property. However, it may be noted that all immovable properties are not liable for GST, as supply of service under GST Law. It would also be pertinent to note that Schedule III to the CGST Act contains a negative list, enlisting activities which shall neither be treated as supply of goods nor supply of services.

Paragraph 5 of Schedule III covers 'sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building'. In this regard, it shall be noted that term 'sale' under the Transfer of Property Act, means a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. The Bombay HC in the case of Provident investment Co. Limited **[2002-TIOL-1289-SC-IT-LB]** had observed that a sale or transfer presupposes the existence of the property which is sold or transferred. It presupposes the transfer from one person to another of the right in the property. Accordingly, it can be ascertained that the word 'sale' denotes transfer of title which is irrevocable and permanent. Hence 'sale of land' denotes transfer of title in land.

Accordingly, it can be understood that the term 'land' not just includes full title in land but also rights which gives benefits associated with it. Hence, the expression 'sale of land' connotes 'transfer of title in land including rights in the form of benefits arising from it'. Since, TDRs are in the nature of a benefit arising out of land, the same could be squarely covered under paragraph 5 of schedule III of the CGST, Act and hence it can be argued that TDRs can neither be regarded as supply of goods nor supply of services or both.

Before parting...

In view of the above it can be understood that consideration received towards trading of TDRs shall not be liable to GST. It shall be noted that although Notification No. 4/2018 – Central Tax (Rate) dated 25 January 2018, notifies the developers and such persons to pay tax for TDR transactions, as a general principle of law, notifications do not, and cannot create a charge on something that is not taxable within the purview of the charging section of the Act. This matter is unlikely to be settled, unless the top courts of the Country intervene into the interpretation of law.

Vipul Agarwal

Group Chief Financial Officer,
ICRA Limited

Mr. Agarwal shares his thoughts and perspective on India's service sector and business environment in an ever-changing economic, business and regulatory ecosystem...

The country is facing repeated economic disruptions due to multiple waves of COVID. Although, the lockdown measures are substantially restricted, the economic sentiments may still be dampened greatly. In your view what is the impact on overall economy?

Covid-19 has definitely impacted economic growth causing significant reduction in demand in various sectors. This being said, by now the economy seems to have learned to survive the pandemic. With increasing vaccination there is also a surge in economic optimism. Current year's outlook also appears good as Government has taken various measures to support the economy.

The stock markets are also performing well and are scaling to record highs which re-emphasise the global investor confidence in India. The debt market is growing, companies in Fin-Tech, Food-Tech as well as Edu-Tech are doing extremely well. I believe we all shall witness a positive momentum in later half of the financial year.

So far as impact on our rating industry is concerned, it's given that in difficult times a larger role needs to be played by this industry. Afterall the very basis of credit rating is to analyse the risk – a necessary precautionary measure. The overall momentum may have seen deferral at the peak of pandemic outbreak but it has only recouped right thereafter.

Largely all other sectors are also booming back to growth trajectory, be it automobile sector or real estate sector. Though there is still some lacklustre in hospitality and aviation but I believe it's only a matter of time that it comes back to normalcy over next few quarters.

Do companies face any compliance issues, and are any changes expected to be taken up by Government?

The Government has been quiet focussed on corporate governance and raising compliance benchmarks. Recently, regulatory landscapes have seen various changes increasing compliances measures aimed at transparency and integrity.

At the same time, Government has kept in view the ease of doing business especially for MSME sector. I believe they have been able to deliver quiet well on this front, though there are certain areas still to be addressed.

The tax space is fast evolving over the last few years. What has been the impact of such changes on the economy and the service industry? Do you believe that such changes are aligned with overall long-term growth objectives?

The tax landscape of any country evolves over a period of time, in India, we have witnessed times when there were no transfer pricing provisions and a catena of litigations arose as they were introduced in 1990's era. It is likely that equalisation levy on global income of techno-giants may lead to a similar situation.

While taxman has been busy doing intricate analysis of situations and bringing in most harmonious system of taxation but that shall be coupled with effective implementation on ground. We have recently witnessed the fate of GSTN as well as new IT portal, so the point here is that policy level decisions shall succeed by effective implementation so that corporates and public at large are

not left to suffer. Having said that, I appreciate Government for bringing in changes, such as deletion of retrospective tax amendments, as well as its effective participation in OECD deal for international tax reforms.

What is your outlook on digitisation and what role would it play in better corporate governance and compliance?

India like most of the progressive economies have shifted to digitalization when it comes to tax compliances. The transparency that these procedures will bring about will ultimately lead to reduced tax evasion and smooth economy. There was a big call for digital technology in almost all industries and job functions during the pandemic. We see digitisation as a key pillar to improve governance and compliance, by driving greater security, transparency and efficiency in processes – and tax operations are no exception!

INDIA LIKE MOST OF THE PROGRESSIVE ECONOMIES HAVE SHIFTED TO DIGITALIZATION WHEN IT COMES TO TAX COMPLIANCES. THE TRANSPARENCY THAT THESE PROCEDURES WILL BRING ABOUT WILL ULTIMATELY LEAD TO REDUCED TAX EVASION AND SMOOTH ECONOMY.

Government's continuous efforts in digitizing the tax space are a welcome move in the right direction. Amendments such as the e-way bill, e-invoicing, IT return defaulters tagging, etc. will bring in more transparency in the market and eventually lead to an equal distribution of wealth and reduction in Black Money too.

While we welcome the changes introduced in the tax space and recognize its role in maintaining India's economic growth in the long term, these also bring in many practical challenges to the tax payer in terms of IT systems preparedness, educating and aligning the on-ground team, ensuring timely and correct filing of monthly/annual tax returns. In a way, it also reiterates the very law of nature – 'Adapt to survive'.

How regulated is rating Industry and what are your views on government policies around such regulations, do you expect more autonomy to be given to rating agencies in India?

As far credit rating industry is concerned, we operate in a highly regulated environment, so the compliance standards, which are mainly regulated by SEBI and RBI are already all time high.

However, there's a need for larger autonomy to the rating agencies to acquire necessary information on real time basis for more relevant outcomes. Currently there are certain bottlenecks where the banks and other agencies are either reluctant to share data with the rating agencies or sharing the data with inordinate delay which impacts the overall process and producing deferred analysis.

In today's digital world, lot of data with respect to company is available on Government portal, so if provided with access in a regulated environment, we would be able to use the same for better risk assessment.

Note: *The views/opinions expressed in this section are those of the Author and do not necessarily reflect the views/opinions of the organization and/or the Publishers.*

ITAT holds Re-domiciliation on the ground to deny DTAA benefits, a way of life for offshore entities

Asia Today Limited
2021-TII-124-ITAT-MUM-INTL

The Assessee was initially registered as 'Signpost International Limited' in November 1991 in the British Virgin Islands ('BVI') as an international business company and was renamed in May 1992.

The Assessee was issued TRC in July 1999 in Mauritius after its incorporation on June 29, 1998 whereas it was discontinued by the Registrar of Companies in the BVI from June 30, 1998.

For AY 2000-01 to 2003-04, the Revenue contended before the ITAT that being originally a BVI company, the Assessee was not entitled to treaty benefits under the India-Mauritius DTAA. Whereas, the Assessee submitted that even though initially it was incorporated in the BVI but at the time of claiming treaty benefits it was registered in Mauritius and its TRC was not in question and, thus, contended that the fact of re-domiciliation did not affect these treaty entitlements.

The ITAT noted that, corporate re-domiciliation, also referred to as 'Continuation', was explained as the process by which a company moved its 'domicile' (or place of incorporation) from one jurisdiction to another by changing the country under whose laws it was registered or incorporated, whilst maintaining the same legal identity.

ITAT also noted that re-domiciliation was dynamic and constantly evolving. It further observed that the offshore entities would transfer the domicile by way of continuation from one place to another when the rules and regulations then prevailing in the current 'domicile' were no longer fit for the company's purpose.

It was also noted that many popular offshore centres not only permit but also facilitate the re-domiciliation and BVI and Mauritius were such jurisdictions.

Taking into account the fact that TRC was effective from a date prior to the completion of the re-domiciliation process, the ITAT rejected the objection raised by the revenue. It was observed that, re-domiciliation of the company by itself could not lead to denial of treaty entitlements of the jurisdiction in which the company was re-domiciled. Although, the fact of re-domiciliation of the company could at best trigger detailed examination or the re-domiciled company being actually fiscally domiciled in that jurisdiction. Mere suspicion lurking in the mind of the Revenue could not be reason enough to reject the treaty entitlement in question.

Thus, rejecting Revenue's objection for denial of treaty benefits under India-Mauritius DTAA due to Assessee's re-domiciliation from British Virgin Islands (BVI) to Mauritius, the ITAT held re-domiciliation to be the way of life for offshore entities.

ITAT upholds CIT(A)'s direction for reassessment under Section 147, directs examination of accommodation entries under Benami Law

Manoj Kumar Jain
ITA Nos. 4160, 4161, 4162 & 4163/Del/2018

The Assessee was a part of a group allegedly engaged in providing accommodation entries. It was found that the Assessee was also a part of a racket involving several bogus entities generating bogus bills wherein Assessee's involvement was found to be for more than INR 100 Crores. Pursuant to a search operation, proceedings under Section 153C of the IT Act were initiated against the Assessee resulting in the addition of INR 26.56 Crores on a protective basis in the hands of the Assessee, on account of cash deposits in various bank accounts held by M/s Rishav Trading Company of which the Assessee was the proprietor.

Aggrieved, the Assessee approached the CIT(A). The CIT(A) allowed Assessee's ground challenging assumption of jurisdiction under Section 153C of the IT Act but considering huge racket involved, directed Revenue to proceed under Section 147/148 of the IT Act.

Aggrieved by the CIT(A) order, the Assessee preferred an appeal with ITAT challenging the CIT(A)'s direction to the AO to initiate proceedings under Section 147/148.

Placing reliance on SC ruling in Kapoorchand Shrimal [131 ITR 451], ITAT observed that CIT(A) was duty bound to correct the errors made by the AO.

ITAT also observed that challenging the CIT(A)'s direction to the AO was premature on Assessee's part, since it was not known whether Revenue acted on such direction or not.

Further, finding the CIT(A)'s direction to be in conformity with law, ITAT directed the Revenue to examine the applicability of the provisions of the Prohibition of Benami Property Transactions Act, 1988 in the hands of the beneficiaries and the Assessee and other persons who were involved in this whole racket of providing bogus bills over and above initiating the provisions of Section 147 and 148.

Thus, in view of the glaring facts covering huge racket of accommodation entries, ITAT upheld CIT(A)'s order wherein proceedings under Section 153C were to be quashed and directions for initiation of reassessment under Section 147 was passed.

HC holds Revenue bound to give reasons for adjusting demand beyond 20%, grants refund

Eko India Financial Services Private Limited
W.P.(C) 5819/2021

The Assessee had preferred a writ petition before the HC challenging adjustment of demand in AY 2017-18 in excess of 20% against the outstanding refund for AY 2019-20 to be in contravention of CBDT Office Memorandum dated February 29, 2016 as amended by Office Memorandum dated August 25, 2017.

The Assessee had paid INR 3.79 Crores which was adjusted against the outstanding refund for AY 2019-20 which amounted to more than 20% of the outstanding demand of INR 9.68 Crores for AY 2017-18.

Before the HC, the Assessee submitted that the Revenue

was obliged to grant a stay on recovery of outstanding demand upon recovery of 20% since an appeal was pending against the assessment order before CIT(A).

Remarking that the Revenue could not improve upon or supplement the reasons which were already given in the adjustment of refund order passed under Section 245. The HC placing reliance on a plethora of SC rulings, observed that the Revenue was bound to follow the rules and standards they themselves had set on pain of their action being invalidated and grant stay of demand till disposal of the first appeal on payment of 20% of the disputed demand.

If the AO was of the view that the payment of a lump sum amounts higher than 20% was warranted, then the AO would have to give reasons to show that the case falls in Para 4(B) of the CBDT office memorandum dated February 29, 2016.

Further, finding that the order under Section 245 for adjustments of refunds and order on stay of demand under Section 220(6) did not give any particular reason as to why any amount in excess of 20% of the outstanding demand should be recovered. The HC observed that the Revenue was entitled to pre-deposit of only 20% of the disputed demand during the pendency of the appeal and thus, directed refund of the amount adjusted in excess within four weeks.

ITAT allows proportionate depreciation, interest, operating expenses for Farah Khan's residence-cum-office

Farah Khan
ITA No.4428/Mum/2019

The Assessee was a popular film director and choreographer who had filed her return declaring an income of INR 99.19 lakhs for AY 2013-14.

The Assessee was owner of 6 flats in a building at Andheri-Lokhandwala, Mumbai, and all the units were stated to be held as office-cum-residence of the Assessee. It was submitted that Assessee used a specified part as her office and the remaining part was being used as her residence. For the part used as her office, she claimed an aggregate deduction of INR 1.55 Crores for: (i) Interest on Loan (ii) Depreciation on property used as office (iii) Depreciation on Furniture & Fixtures (iv) Society Charges (v) Electricity Charges, under the relevant provisions of Section 36(1)(iii), 32 and 37(1) of the IT Act.

The expenses were claimed deductible on the plea that half of the premises were used as Assessee's office while the remaining half was used as residence. The area of office and residence was stated to be clearly demarcated and having an office next door to Assessee's residence, would provide her comfort of not having to be in public spaces except where necessary.

During the course of assessment proceedings, the AO called for details of the above expenditure in specified formats. Further, contending the absence of any satisfactory explanation from the Assessee and failure to produce any documentary evidence to substantiate that the premises were being used as office, the AO disallowed the claim of INR 1.55 Crores and added it to her income.

Aggrieved by the decision of AO, the Assessee approached the CIT(A), who observed that the Assessee was a well-known choreographer and earning significant income from professional activities and was earning a huge professional income would not be possible without any specified business place.

Therefore, the CIT(A) deleted the disallowance relying on the Bombay HC ruling in Western Outdoor Interactive Pvt. Ltd **[2012-TIOL-625-HC-MUM-IT]** wherein it was held that

when the benefit / deduction is available for a particular number of years on satisfaction of certain conditions and under the provisions of the Act, then without withdrawing or setting aside the relief granted for the first AY in which claim was made and accepted, the AO cannot withdraw the relief for subsequent assessment years.

Aggrieved, the Revenue approached the ITAT which observed that that Assessee being an artist would require creative space for professional engagements and for the year under consideration she did not use any other space for her work.

Further, ITAT observed that said 6 units were acquired by the Assessee and the relevant details of which were verified by the Revenue and as the depreciation on the block of assets had been allowed to the Assessee in earlier years, the same could not be denied in this year since individual assets had lost their specific identity.

With regards to the interest on loan, ITAT held that interest paid on loan had been bifurcated between residential portion and office portion and interest paid relating to office portion had been claimed as deduction under Section 36(1) of the IT Act.

Further as society maintenance and electricity expenditure were allowed under Section 37(1) of the IT Act in previous years, ITAT applying the rule of consistency allows the same under Section 37(1).

Thus, ITAT allowed Assessee's claim of INR 1.55 Crores for depreciation, interest on loan and society maintenance & electricity expenses on part of the residential units used for professional purposes.

ITAT holds exemption of SEZ unit not deniable on comparison with incomparable unit

Indo Auerlichit
ITA No. 63/SRT/2018

The Assessee was a partnership firm engaged in manufacturing of a variety of mantles at Special Economic Zone at Surat, Gujarat.

The Assessee was qualified for deduction under Section 10AA of the IT Act and had started manufacturing in AY 2009-10 and accordingly claimed deduction under Section 10AA of the Act for AY 2009-10.

The Assessee filed its return of income for AY 2013-14 on September 28, 2013, declaring nil income. The case was selected for scrutiny.

During the assessment, the AO noted that the Assessee had shown a gross profit @ 84.01% and net profit (NP) @ 76.16%.

The Assessee had claimed deduction under section 10AA of the Act. The AO doubted high margin profitability of the Assessee and asked the Assessee to furnish details of comparable instances of companies engaged in manufacturing of similar product.

The Assessee filed its reply, contending that there is no comparable company which is manufacturing the hard incandescent mantles and the Assessee developed the capacity to manufacture hard mantles only because of acquisition of running plant from Malta.

The reply of the Assessee was not accepted by the AO and he took a comparable case of Fargo Mantle Products Private Ltd, ('FMPPL'), which was also engaged in the business of manufacturer of soft mantles.

The AO compared the financial result of the Assessee with FMPPL and came to the conclusion that comparable company was showing consistent loss, however, the Assessee had shown abnormal profit.

The AO restricted the profitability @ 8% and thereby restricted the deduction under Section 10AA to that extent only out of total claim of deduction of INR 16.65 Crores.

The AO worked out the deduction of INR 1.75 Crores only and resultantly disallowed remaining amount of INR 14.90 Crores and brought the said disallowance to tax under the head 'other sources'.

The AO further noted that the Assessee had not allowed the interest on capital contribution of partner and remuneration thereto. The AO disallowed interest on capital contribution of the partner @ 12% and worked out of the disallowance of interest to capital contribution of partner at INR 1.79 Crores.

Aggrieved by the decision of AO, the Assessee approached the CIT(A) which deleted both the disallowances causing the Revenue to prefer an appeal before the ITAT.

The ITAT observed that the Assessee was operating at a 100% export-oriented unit in SEZ, Surat and therefore it was the sole exporter of hard and soft mantle, widely used in Europe and Germany, thereby earning good margin of profit not comparable with FMPPL which was manufacturing only soft mantle.

ITAT further observed that neither the product of comparable FMPPL nor the end use or turnover was comparable that of the Assessee's and accordingly, held that the profit could be reworked only in accordance with Section 10AA.

Separately, ITAT dismissing Revenue's appeal for denial of deduction under Section 10AA and observed that deduction of interest on capital and remuneration to partners was not claimed to enhance profit and claim higher exemption.

ITAT allows working-capital adjustment, restricts TP adjustment only to international transactions undertaken with the AEs

Inflow Technologies Private Limited
ITA No.3338& 3339/Bang/2018

The Assessee had preferred an appeal before the ITAT for the AYs 2013-14 and 2014-15 with regard to the TP adjustments made by the CIT(A)/TPO on margin computation along with the disallowance of interest expenses, working capital adjustment and corporate guarantee.

ITAT noted that the comparable Priya International Limited, had three segments. And out of the total revenue of INR 11.12 crores, the sale of software/ electronics was at INR 3.03 Crores. Accordingly, ITAT directs AO/TPO to adopt the margin of Priya International Limited with regard to the segment of electronics alone.

Further, ITAT directed AO/TPO to restrict TP adjustment to the international transaction undertaken by Assessee with its AEs only.

With respect to Assessee's plea of working capital adjustment for AY 2014-15, ITAT stated that the Assessee had provided detailed working capital adjustment working wherein no defect was pointed out by the lower authorities. Thus, AO/TPO/DRP were not justified in denying Assessee's claim of working capital adjustments.

Referring to Rule 10B(1)(e)(iii), ITAT found that it was not the case of the TPO/DRP that differences in working capital requirements of the international transactions and the uncontrolled comparable transactions was not a difference which will materially affect the amount of net profit margin in the open market. If for reasons given by the Revenue Authorities working capital adjustment could not be allowed to the profit margin, then the comparable uncontrolled transactions chosen for the purpose of comparison would have to be treated as not comparable in terms of Rule 10B(3). Thus, ITAT directed AO/TPO to allow working capital adjustment.

Further ITAT held that corporate guarantee given by assessee to its wholly-owned foreign subsidiary is an international transaction and the arm's length price ought to be computed on the subject transaction. However, in the instant case, it noted that AO/TPO/DRP failed to examine the fact that amount of INR 7.67 crores of the subsidiary on account of advance was lying with the Assessee for which no interest was being charged by the subsidiary.

Accordingly, ITAT remitted the matter back to AO/TPO for fresh examination.

ITAT allows extended AE credit period in light of applicability of Advance Pricing Agreement rollback

ANZ Support Services India Private Limited
IT(TP)A No.58/Bang/2019

The Assessee was engaged in the business of provision of Information Technology enabled Services (ITeS) to its AE.

The issue was in relation to interest on delayed AE receivables in the light of Advance Pricing Agreement entered into by Assessee for AY 2014-15.

During the given AY, TPO, considering excessive credit

period (beyond a normal of 30 days), levied interest on delayed receivables considering it as a separate international transaction and the same was accepted by the DRP.

Aggrieved, the Assessee preferred an appeal before ITAT, wherein it submitted that based on a Bilateral Advance Pricing Agreement entered into by the Assessee, a period of 60 days had been agreed for the realization of invoices pertaining to international transactions (i.e. ITeS) from April 1, 2017. The actual weighted realization period for AY 2014-15 was 48 days.

Based on such submissions and in light of CBDT Circular No. 10/2015 dated June 10, 2015 and Rule 10MA(2)(i), ITAT opined that AY 2014 -15 is covered under roll-back period of the Advance Pricing Agreement.

ITAT observed that period of realization of 60 days which is agreed in the Advance Pricing Agreement for April 1, 2017 onwards should be considered for AY 2014-15 as well. Further, placing reliance on host of rulings submitted by Assessee, ITAT held that the methodology/approach as agreed with CBDT in the Advance Pricing Agreement in covered years shall be applied for other years as well which are not covered under the Advance Pricing Agreement.

ITAT directs deletion of AMP-adjustment given higher margins earned from AE transactions, follows earlier orders

Haier Appliances (India) Pvt Ltd
ITA No. 1594 and 2968/Del/2016

The Assessee was a wholly owned subsidiary company of Haier Electrical Appliances Corp. Ltd., China and was engaged in the business of manufacturing and distribution of consumer durables, e.g., air conditioner, refrigerator, washing machine, television etc.

In terms of Trade Mark License Agreement entered with Haier China, the Assessee had exclusive right for use of the trademark 'HAIER' in India. During the relevant previous year, the Assessee had undertaken international transaction amounting to INR 224.55 crores with its associated enterprise.

In the Transfer Pricing Document, the international transaction relating to trading segment were bench marked applying Resale Price Method ('RPM') and manufacturing segment applying Transaction Net Margin Method ('TNMM') as the most appropriate method.

The TPO had proceeded to undertake benchmarking analysis of the advertisement, marketing and sales promotion ('AMP') expenses incurred by the Assessee for the products having brand name 'HAIER', applying Bright Line Test ('BLT') and making an adjustment of INR 25.17 crores being the purported difference on account of advertisement and sales promotion expenses incurred by the Assessee.

The DRP following the jurisdictional HC decision in case of Sony Ericson Mobile Communication India Pvt. Ltd [374 ITR 118], rejected the application of BLT and directed the ALP computation be made by considering Cost Plus Method ('CPM') as MAM and proposed a TP-adjustment of INR 11.19 Crores;

Being aggrieved, both Assessee as well as Revenue preferred an appeal before ITAT.

The ITAT observed that similar issue had been adjudicated by the coordinate bench in Assessee's own case for AY 2008-09 and AY 2009-10. Coordinate bench considering a mark-up of 9% on the reduced AMP expenses (as directed by the DRP) had noted that ALP of the AMP expenses was lesser than the grant/subsidy received by the Assessee.

Accordingly, the coordinate bench had concluded by stating that since the grant received by the Assessee exceeded the arm's length price of AMP, no TP adjustment in respect of AMP expenses was called for.

ITAT also observed that the facts in the instant year were akin to the facts of the earlier year and the total of AMP expenses after excluding selling and distribution expenses and advertisement expenses were considered by the TPO in the final order and the same was allocated between trading and manufacturing segment.

Further, by applying the principal laid down by Jurisdictional HC decision in Assessee's own case, benchmarking was undertaken by comparing the gross profit earned by the Assessee net of AMP (Net of selling and distribution expenses as taken by the TPO in order passed after DRP) between AE and Non-AE transactions for trading segment.

ITAT further noted that the adjusted gross profit margin earned by Assessee from its AE was 14.92% as against adjusted gross profit margin earned on similar transactions with non-AE transaction at 8.17%.

Accordingly, the ITAT directed the deletion of entire TP adjustment made by the TPO as the margins earned qua AE transactions were higher than that of margins earned from non-AE transaction.

HC quashes TPO-reference made without granting hearing opportunity

Hitachi Hi Rel Power Electronics Pvt Ltd
R/Special Civil Application No. 23302 of 2019

The Assessee was engaged in manufacturing of industrial automation solution, rotating machine control, power controller, uninterrupted power supply and power conditioning products.

During AY 2017-18, the Assessee availed an unsecured External Commercial Borrowing rupee loan for working capital purposes from its related party Hitachi International Treasury Limited, Singapore. This loan carried an interest at the rate of 7.19% per annum. The Assessee has reported the amount of interest paid on subject loan in clause 14 of Form 3CEB.

However, the AO issued a show cause notice wherein it observed that the loan taken from Hitachi International Treasury limited was reported in Form 3CEB and asked Assessee to show cause as to why penalty under section 271AA of the Act should not be initiated and the case should not be referred to TPO for determination of arm's length on such unreported transaction.

The Assessee clarified in its reply that there was no obligation to report the "loan transaction" amount in the Form 3CEB. Only the interest paid on such loan transactions which would have a bearing on the profit /loss ought to be reported in clause 14 of the Form 3CEB. Assessee further submitted that it had appropriately disclosed the transaction, the factum of obtaining the loan and the amount of interest paid / payable as well as the method used to determine the ALP of the same in the Form 3CEB.

Subsequently, the AO rejected Assessee's submissions and made a reference to the TPO. The TPO in turn issued the impugned notice dated December 20, 2019 under Section 92CA (2) and 92D (3) of the IT Act.

Aggrieved, the Assessee filed a writ application before the HC which allowing Assessee's writ, set aside reference made by AO to TPO without giving assessee an opportunity of being heard as required by law for AY 2017-18 and also quashed TPO's notice issued under Section 92CA (2) and 92D (3).

Accordingly, HC remitted the proceedings back to the AO for fresh consideration of the matter and directed the AO to give an opportunity of hearing to the Assessee, requiring the aforesaid exercise to be undertaken within a period of four weeks from the date of receipt of the writ of this order.

CBDT issues clarification on newly inserted Rule 8AB

Notification No. 90/2021
August 9, 2021

CBDT notifies Income Tax (22nd Amendment) Rules, 2021, through which it inserts Rule 21AI for computation of income of specified fund exempt under Section 10(4D) and Rule 21AJ for the determination of capital gains of a specified fund under Section 115AD(1A).

Accordingly, CBDT provides formula for computation of income attributable to units held by non-resident in a specified fund for the purpose of Section 10(4D) and prescribes Form No. 10IG under Rule 21AI titled "Statement of Income Exempt under Section 10(4D)".

Further, CBDT also provides formula for determination of income of a specified fund in the nature of short-term or long-term capital gains referred to in Section 115AD(1)(b) and prescribes Form No. 10IH under Rule 21AJ titled "Statement of Income of Specified Fund eligible for concessional tax under Section 115AD(1A)" which is required to be furnished annually.

CBDT notifies establishment of 7 Interim Boards of Settlement

Notification No. 91/2021
August 10, 2021

CBDT notifies the establishment of Interim Boards of Settlement at Delhi, Kolkata, Mumbai and Chennai by the Central Government in exercise of powers under Section 245AA (1) of the IT Act.

3 Interim Boards of Settlement have been established in Delhi, 2 in Mumbai and 1 each in Kolkata and Chennai.

CBDT notifies rules for computation of MAT relief in secondary adjustment / APA cases

Notification No. 92/2021
August 10, 2021

CBDT notifies the Income Tax (23rd Amendment) Rules, 2021, through which it inserts Rule 10RB for computation of relief in MAT payable by an Assessee due to operation of subsection (2D) of section 115JB.

Sub-section (2D) to Section 115JB was inserted vide Finance Act, 2021 to provide relief in cases where previous year's income gets included in the current year due to an APA or a secondary adjustment under transfer pricing. In such cases, the taxpayer can make an application to the AO requesting for the re-computation of book profit under section 115JB of the past year(s).

Accordingly, the newly inserted Rule 10RB, provides for a

formula-based approach for computation of relief in MAT liability.

Further, CBDT also notifies Form No. 3CEEA (to be filed electronically) for claiming such relief.

CBDT prescribes "any other person" for verifying returns, authorised representation for companies/LLPs

Notification No. 93/2021
August 18, 2021

CBDT notifies Income Tax (24th Amendment) Rules, 2021 by virtue of which CBDT inserts Rule 12AA for the purpose of clauses (c) and (cd) of Section 140 and Rule 51B for the purpose of Section 288(2)(viii).

As per the Rules, "any other person" shall be the person appointed by the Adjudicating Authority for discharging the duties and functions of: (i) an interim resolution professional, (ii) a resolution professional, (iii) or a liquidator, under the IBC and the rules and regulations made thereunder.

Further explains that Adjudicating Authority shall have the same meaning as assigned to it Section 5(1) of the IBC.

CBDT extends time lines for electronic filing of various Forms

Circular No. 15/2021
August 3, 2021

Considering the non-availability of e-filing utility for certain forms and difficulties faced by taxpayers, CBDT notifies extension of the following timelines for compliance and assessment:

Compliance	Period	Earlier Due Date	Revised Due Date
Quarterly Statement in Form No. 15CC to be furnished by authorized dealer in respect of remittances made under Rule 37BB of the Income-tax Rules, 1962 ('IT Rules')	1st Quarter of Financial Year 2021-22	July 31, 2021	August 31, 2021
Equalization Levy Statement in Form No. 1	Financial Year 2020-21	July 31, 2021	August 31, 2021
Statement of Income paid or credited by investment fund to unit holder – Form 64D under Rule 12CB of the IT Rules	Previous Year 2020-21	July 15, 2021	September 15, 2021
Statement of Income paid or credited by investment fund to unit holder – Form 64C under Rule 12CB of the IT Rules	Previous Year 2020-21	July 31, 2021	September 30, 2021
Intimation to be made by a Pension Fund in respect of each investment made by it in India in Form No. 10BBB under Rule 2DB of the IT Rules	1st Quarter of Financial Year 2021-22	July 31, 2021	September 30, 2021
Intimation to be made by Sovereign Wealth Fund in respect of investments made by it in India in Form -II SWF	1st Quarter of Financial Year 2021-22	July 31, 2021	September 30, 2021

CBDT further extends time lines for electronic filing of various Forms

Circular No. 16/2021
August 29, 2021

Considering the non-availability of e-filing utility for certain forms and difficulties faced by taxpayers, CBDT notifies extension of the following timelines for compliance and assessment:

Compliance	Period	Earlier Due Date	Revised Due Date
Application under Section 10(23C), 12AB,35(1)(ii)/(iia)/(iii) and 80G of the Act in Form No. 10A/ Form No.10AB, for registration/ provisional registration/intimation/approval/ provisional approval of Trusts/ Institutions/ Research Associations etc.	NA	August 31, 2021	March 31, 2022
Quarterly Statement in Form No. 15CC to be furnished by authorized dealer in respect of remittances made under Rule 37BB of the IT Rules.	1st Quarter of Financial Year 2021-22	August 31, 2021	November 30, 2021
Quarterly Statement in Form No. 15CC to be furnished by authorized dealer in respect of remittances made under Rule 37BB of the IT Rules.	2nd Quarter of Financial Year 2021-22	October 15, 2021	December 31, 2021
Equalization Levy Statement in Form No. 1	Financial Year 2020-21	August 31, 2021	December 31, 2021
Uploading of the declarations received from recipients in Form No. 15G/15H	1st Quarter of Financial Year 2021-22	August 31, 2021	November 30, 2021
Uploading of the declarations received from recipients in Form No. 15G/15H	2nd Quarter of Financial Year 2021-22	October 15, 2021	December 31, 2021
Intimation to be made by Sovereign Wealth Fund in respect of investments made by it in India in Form -II SWF	1st Quarter of Financial Year 2021-22	September 30, 2021	November 30, 2021
Intimation to be made by Sovereign Wealth Fund in respect of investments made by it in India in Form -II SWF	2nd Quarter of Financial Year 2021-22	October 31, 2021	December 31, 2021
Intimation to be made by a Pension Fund in respect of each investment made by it in India in Form No. 10BBB under Rule 2DB of the IT Rules	1st Quarter of Financial Year 2021-22	September 30, 2021	November 30, 2021
Intimation to be made by a Pension Fund in respect of each investment made by it in India in Form No. 10BBB under Rule 2DB of the IT Rules	2nd Quarter of Financial Year 2021-22	October 31, 2021	December 31, 2021
Intimation on behalf of an international group for the purposes of the proviso to sub-section (4) of section 286 of the Act in Form No. 3CEAE under Rule 10DB	NA	November 30 ,2021	December 31, 2021

Compliance	Period	Earlier Due Date	Revised Due Date
Intimation by a constituent entity, resident in India, of an international group, the parent entity of which is not resident in India, for the purposes of sub section (1) of section 286 of the Act, in Form No.3CEAC under Rule 10DB	NA	November 30 ,2021	December 31, 2021
Report by a parent entity or an alternate reporting entity or any other constituent entity, resident in India, for the purposes of sub-section (2) or subsection (4) of section 286 of the Act, in Form No. 3CEAD under Rule 10DB	NA	November 30, 2021	December 31, 2021
Last date of payment of amount under Vivad se Vishwas (without additional amount)	NA	August 31, 2021	September 30, 2021
Last date of payment of amount under Vivad se Vishwas (with additional amount)	NA	NA	October 31, 2021

AP AAR classifies Car seat covers as 'accessories' chargeable to 28% GST under CTH 8708

Saddles International Automotive and Aviation Interiors Private Limited
AAR No. 15/AP/GST/2021 dated 21 June 2021

The Applicant had sought an advance ruling before the Andhra Pradesh AAR to ascertain the classification of 'car seat covers' under CTH chargeable to CTH 8708 chargeable to 28% GST or under CTH 9401 chargeable to 18% GST. The Applicant submitted that the 'seat covers' were rightly classifiable under CTH 9401 as the 'seat covers' are an essential and integral 'part of seats, without which 'seat' can be rendered dysfunctional.

The AAR observed that CTH 9401 covers Seats and parts thereof. Referring to the definition of the term 'part', the AAR observed that 'parts' combine to form a whole and they are integral to the completion of any article or equipment. Further, the term 'accessories' means an object or device that is not essential in itself but adds to the beauty, convenience, or effectiveness of something else. Basis the definitions, it had been observed that seat covers cannot be a part of seats by any means in the instance case. They are meant for the protection of the seats and the functional value of seat covers, is the comfort and convenience it extends to the driver and the passengers. Thus, the 'seat covers' are not essential parts of the seats but accessories that enhance their functional value.

The AAR further relied upon CBEC Circular No. 541/37/2000-CX dated 16 August 2000, wherein it had been clarified that car seat covers are classified under CTH 8708. In view of the above observations, the AAR ruled that car seat covers merit classification under CTH 8708 chargeable to 28% GST.

Authors' Note

The AP AAR has correctly interpreted the term 'parts' in as much as the seat cover is an accessory to the automotive vehicle and not the car seats or its parts as the seats are complete in themselves even without such covers. It would be pertinent to note that is a similar ruling before the Gujarat AAR in the case of Shiroki Technico India Private Limited **[2021-TIOL-11-AAR-GST]**, it had been held that Seat Adjusters are classified under CTH 8708 as it does not give any shape or structure to the seat but merely helps the seat to slide back and forth as per the convenience/requirement or comfort of the driver or passenger.

AAR holds ITC to be inadmissible on Canteen Facility to employees

Tata Motors Limited
2021-TIOL-197-AAR-GST

The Applicant, engaged in the business of manufacturing of motor vehicles, had maintained canteen facility for its employees at its factory premises to meet the requirements of the Factories Act. The Applicant recovered nominal amounts from employees as expenditure incurred towards canteen facility. The Applicant had filed an Application before the Gujarat AAR to ascertain whether ITC is available on GST charged by service provider on canteen facility provided to employees working in factory.

The Gujarat AAR observed that the sub-clause of Section 17(5)(b)(i) ends with colon ':' and is followed by a proviso and this proviso ends with a semicolon. In this regard, it had been observed that colons are used in sentences to show that something is following, like a quotation, example, or list. On the other hand, Semicolons are used to join two independent clauses/ subclauses, or two complete thoughts that could stand alone as complete sentences.

Accordingly, it was further observed that the Statute intended the said sub-clauses to be distinct and separate alternatives, with distinctively different qualifying factors and conditionalities. In view of the above observations, the Gujarat AAR inferred that Section 17(5)(b)(i) sub-clause ending with a colon and followed by a proviso which ends with a semi colon is to be read as independent sub-clause, independent of sub clause Section 17(5)(b)(iii) and its proviso [of subclause iii]. Thereby, the proviso to section 17(5)(b)(iii) is not connected to the sub-clause of Section 17(5)(b)(i) and cannot be read into it. Accordingly, it was ruled that ITC on GST paid on canteen facility is blocked credit u/s. 17(5) of the CGST Act and therefore, inadmissible.

Authors' Note

Although the interpretation of the Gujarat AAR in respect of colons and semi-colons is backed by various judgements, it seems that the Authority has missed out on considering the legislative intent of the Statute. It would be pertinent to note that the Delhi HC in the case of Rodhee vs. Govt. of Delhi and Ors. [(2003) IILLJ 5 Del] had held that the intention of a semi-colon is to segregate two substantially similar topics from each other. If the said punctuation mark is not employed, a part of the foregoing words would have to be repeated once again or in the same context would have to be reiterated. It was further observed that if the proviso was not to operate on the first sub-section it should have ended with a full stop and not a semi-colon.

Accordingly, the Delhi HC had held that the Court's duty is to impart the meaning intended by the Statute and the legislature. Drawing the said analogy from the afore-said case, it can be inferred that while the sub-clauses of Section 17(5)(b) end with semi-colons, it is merely for purpose of brevity and not to assign independent meaning to the respective sub-clauses.

MP AAR classifies marketing consultancy services as 'Intermediary' Service

DKV Enterprises Private Limited
2020-TIOL-183-AAR-GST

The Applicant had been engaged as a non-exclusive consultant for a Singapore Company for the sale of their products to certain refineries in India. The Applicant claimed to provide only marketing consultancy service in India on behalf of the foreign company and their billing is directly done to the foreign company in foreign currency and paid by inward remittance. Further, the Applicant claimed to not have any agreement with the Indian clients for rendering or facilitating any sale / purchase.

In view of the above, the Applicant had filed an application before the MP AAR to ascertain whether such marketing and consulting services are classifiable as 'export of service' or not. The AAR had held that the above-mentioned service was in fact classifiable as 'intermediary service' and therefore chargeable to IGST. Aggrieved, the Applicant had preferred an Appeal before the MP AAAR praying for remanding the matter back to the AAR to ascertain the question in light of a recent judgement by the Bangalore Tribunal in IBM India Private Limited **[2020-TIOL-297-CESTAT-BANG]**, wherein it had been inter alia held that marketing service for a foreign parent Company is an export of service. Accordingly, the matter had been remanded back.

Upon reconsideration of the question, the MP AAR observed that the judgement relied upon pertained to the pre-GST era, and therefore, is not applicable to Intermediary Service under the IGST Act. It was further observed that in the instant case, the Applicant had been providing marketing services to the Foreign Company in the capacity of an 'Intermediary'. Therefore, it was ruled that the Applicant is liable to pay IGST as an intermediary service provider.

Authors' Note

The chargeability of tax on supply of intermediary services has perpetually been litigative right from the Service Tax era wherein the provisions pertaining to taxability of services provided by intermediary were remarkably similar. It is generally understood that where a taxable person in India facilitates transactions between two or more persons, such a person would be classified as an 'intermediary'. Further, it is important to analyse the actual role and functions as the intermediary is not supposed to provide any services of his own account.

However, there is another school of thought, which believes that where the location of the recipient of service provided by an intermediary is outside India, treating the place of supply in India basis the location of supplier, by virtue of a deeming fiction, is contrary to the scheme of GST law. Therefore, a question arises as to whether such provision is arbitrary and unconstitutional. In this regard, a division bench of the Bombay HC in the case of Dharmendra M Jani **[2021-TIOL-1326-HC-MUM-GST]** passed a judgment, resulting in a deadlock with Hon'ble judges taking contradictory view. While one judge held the intermediary service provision to be unconstitutional, the other has upheld its constitutional validity. The said matter has now been referred to the Chief justice of the Bombay HC on the administrative side for his decision.

Gujarat AAR holds ITC not be eligible on AC, lifts, electrical fittings, etc.

The Varachha Co-Operative Bank Limited
2021-TIOL-206-AAR-GST

During the course of constructing an administrative building, the Applicant had incurred various expenses such as central air conditioning plant, locker cabinet, lift, electrical fittings, architect, interior designing, etc. In respect thereto, the Applicant had filed an application before the Gujarat AAR to ascertain whether it is entitled to avail ITC ('ITC') on the said expenses.

It was observed by the AAR that the air conditioning plant, lift, electrical fittings, roof solar plant and fire safety extinguishers qualify as immovable property as these items cannot be shifted from one place to another without damaging them. Accordingly, ITC is not available on such expenses u/s. 17(5) of the CGST Act, being in relation to immovable property.

As for the architect and interior designing service, it had been held that ITC is also not available as these are procured for construction of new building irrespective of their booking as revenue or capital expenditure. The AAR allowed ITC on locker cabinet and generator as they are movable goods and not restricted under Section 17(5) of the CGST Act.

Authors' Note

It is pertinent to note that Section 17(5) of the CGST Act restricts ITC on immovable property other than Plant and Machinery. It is to be noted that Air conditioning plant, lift, electrical fittings, etc may qualify as 'Plant and Machinery' under Explanation to the said provision. The Rajasthan AAR in the case of Rambagh Palace Hotels Private Limited **[2019-TIOL-155-AAR-GST]** had allowed ITC on electrical fittings, etc. to the extent of capitalization.

Gujarat AAR holds GST to be payable on incentives from Government to be includible in the assessable value

Rajkot Nagarik Sahakari Bank Limited
2021-TIOL-203-AAR-GST

The Applicant is a multi-state Schedule Co-operative bank providing loans without securities up to Rs. 1 lakh to customers at 8% interest. Out of 8% interest, 2% interest portion was to be paid by customer and 6% interest portion was to be paid by the State Government. In respect thereto, the Applicant had been entitled for one-time incentive from the State Government depending on total lending made. In light of the above factual background, the Applicant sought an advance ruling before the Gujarat AAR to ascertain whether onetime incentive can be considered as supply of service or not. If yes, whether the same will qualify to be subsidy or not.

The AAR observed that the incentive provided to the Applicant is for motivation and encouragement to implement specific Scheme of the State Government and such incentive qualifies as consideration. The AAR further observed that the subsidy is granted in public interest to rationalize cost impact on public. It had been also observed that incentive had no bearing on reducing burden of customer but was to incentivize the Applicant for its performance in Scheme. In view of the above, it had been held that the incentive is not in the nature of subsidy and liable to GST. Accordingly, it should be includible in the assessable value and therefore, exigible to tax.

Bangalore AAR holds GST to be liable on supply of vouchers

Premier Sales Promotion Private Limited
2021-TIOL-200-AAR-GST

The Applicant engaged in rendering marketing services had purchased vouchers from third party and supplied the same to the customers who in turn distributed them. The Vouchers included Gift Vouchers, Cash Back Vouchers etc. with multiple redemption options. In respect thereto, the Applicant had sought advance ruling before the Bangalore AAR to ascertain whether the activity of providing vouchers is taxable or not and time of supply thereof.

The AAR observed that instruments issued by the Applicant qualifies as 'vouchers' under Section 2(118) of the CGST Act. It was further held that vouchers assume the character of money when used towards consideration. Basis the above observations, the AAR held that the transaction amounts to supply of goods under Section 7(1)(a) of CGST Act and attracts 18% GST.

Authors' Note

The question qua taxability on vouchers had been considered by TN AAAR in the case of Kalyan Jewellers India Limited [2021-TIOL-12-AAAR-GST]. In this case, the AAAR had held that as Gift vouchers are prepaid payment instruments, they are neither classifiable as goods or services, but money. Accordingly, it can be seen that the Bangalore AAR has ignored the AAAR ruling.

Provisional order attaching bank account ceases after 1 year, permits Assessee to operate account

Implement Impex Private Limited
2021-TIOL-1638-HC-MUM-GST

In pendency of the proceedings against the Petitioner, the Revenue had passed an order for provisional bank attachment u/s. 83 of the CGST Act. The Petitioner had filed a Writ before the Bombay HC on the premise that despite lapse of more than a year from the date provisional attachment of the bank account, the Revenue has not lifted such order of provisional attachment.

The Bombay HC allowed the Writ Petition by directing the Revenue to immediately communicate to the Petitioner's banker that the attachment order ceases to be operative and that the petitioner may be permitted to operate the relevant bank account which was under attachment. It had been further held by the HC that where the appellant has paid the amount under Section 107(6) of the CGST Act, the recovery proceedings for the balance amount shall be deemed to be stayed.

TN AAR classifies Dosai Mix, Idli Mix, etc. as food preparations under attracting HSN 2106 attracting 18% GST

Krishna Bhavan Foods and Sweets
2021-TIOL-186-AAR-GST

The Applicant, engaged in the manufacture and sale of ready to prepare cook products like Dosai Mix, Idli Mix, Tiffen Mix, etc. had sought an Advance ruling before the TN AAR to ascertain the classification of such products and GST rate thereof.

The Applicant referred to Circular No. 80/2018-GST dated 30 December 2018 wherein it had been clarified that Chhatua or Sattu being mixture of flour of ground pulses and cereals are classifiable under HSN 1106 chargeable to NIL/5% GST, depending whether branded or not. Basis the said circular, the Applicant submitted that their products are also ready to mixes and accordingly are also classifiable under HSN 1106.

It was further observed that the applicant neither sells individual Cereal flours/Gran flours classifying under Chapter 11 nor none of the products are entirely made of flours of products falling under Chapter 7 or 8 of the Tariff. Further, it was also observed that the Applicant's reference to the Circular No. 80/2018 -GST dated 31 December 2018 has no application to any of the products in the instant case. All the products are in general for use to prepare the food for human consumption and per se is not a principal or secondary ingredient of dishes. Thus, the products being food preparations are not classifiable specifically under any of the Tariff headings based on the major constituents or other criteria handed by the rules of Interpretation.

In view of the above observations, the AAR held that the Applicant's products are classifiable under HSN 2106 i.e., is a residuary heading for the products which are not specifically classified elsewhere in the Tariff and covers all the food preparations for use for human consumption. The said HSN 2106 is chargeable to 18% GST.

Gujarat HC issues notice in respect to writ challenging levy of IGST on Ocean Freight Charges

Louis Dreyfus Company India Private Limited
TIOL-2021-HC-GUJ

The Petitioner, engaged in refining and packaging of the oil in Gujarat for which goods of varied nature are imported by it from foreign suppliers, and for undertaking delivery, foreign shipping lines are engaged by the foreign suppliers, who, in lieu of ocean freight charges, transfer the goods by vessel to the destination ports. The Petitioner had submitted that IGST on the freight charges paid by the foreign supplier to the foreign transporter on the basis of impugned Notification no. 8/2017-Integrated Tax dated 28 2017 and Notification no. 10/2017-Integrated Tax dated 28 June 2017 had been collected unconstitutionally.

Petitioner further argued that as the said Notifications have already been struck down by the Gujarat HC in Mohit Minerals vs. Union of India [2020-TIOL-164-HC-AHM-GST] as being ultra vires to the IGST Act, which precedent was followed in various other cases, the IGST paid ought to be refunded.

Taking cognizance of the submissions put forth by the Petitioner, the Gujarat HC has issued a notice in this matter for further hearing.

Authors' Note

The Gujarat HC in the case of Mohit Minerals (supra), had held that the importer cannot be said to be the recipient of services where the entire transaction takes place outside the territorial jurisdiction of India. Consequently, striking down the levy notifications. However, even in presence of this judgement, the Revenue authorities often challenge the refund claims for IGST paid on ocean freights.

It is contemplated that the only a clear and unequivocal Circular by the CBIC, referring to the judgement of the Gujarat HC in Mohit Minerals (supra) can finally put this issue at rest. As the said judgement was passed early in the year 2020, it is high time that a clarification in this regard is issued.

TN AAR holds Parting with leasehold rights in land allocated by State for consideration constitutes 'supply'

Inox Air Products Private Limited
2021-TIOL-199-AAR-GST

The Applicant was engaged in the supply of industrial gases and obtained leasehold rights from India Piston Limited ('IPL') for setting up Air Separation Unit ('ASU'). In respect thereto, the Applicant had sought an advance ruling before the TN AAR to ascertain whether GST charged by IPL is eligible for ITC.

The AAR observed that Section 17(5)(d) of the CGST Act specifically restricts ITC on goods and services procured for construction of immovable property with specific exclusion for plant and machinery. The AAR further observed that even if ASU qualifies as plant and machinery, leased 'land' does not qualify as plant and machinery because of specific exclusion from the meaning of plant and machinery given in Explanation to Section 17(5) of the CGST Act. Basis the above observations, the AAR held that Applicant will not be entitled to avail ITC on lease of land taken for construction of plant and machinery.

Kerala AAR holds sale of apartment not to attract GST post CC

Confederation of Real Estate Developers Association of India (CREDAI), Kerala Advance Ruling No. KER/127/2021 dated 31 May 2021

The Applicant engaged in the activity of construction and sale of apartments within the State of Kerala, had filed an application before the Kerala AAR to ascertain the applicability on transaction of sale of apartment held pre/post 08 November 2019 when consideration thereto is received after issuance of completion certificate.

Referring to the definition of 'supply' u/s. 7(2)(a) of the CGST Act, the AAR observed that the activities specified in Schedule III shall neither be treated as a supply of goods nor a supply of services. In the instant case, the AAR observed that it is sale of land which falls under para 5 of schedule III. Further, referring to the clause of para 5 of schedule II, it was observed that GST is applicable on construction of complex, building, etc. which is intended for supply to buyer. However, GST shall not be applicable if the entire consideration has been received after issuance of completion certificate. It was further held that if consideration is received before issuance of completion certificate, then it shall fall under the scope of supply as per sec 7(1). In view of the above observations, the Kerala AAR held that if the entire consideration from customer is received after submission of Completion Certificate, the transaction of apartment sale would not be treated as supply under GST.

SC sustains HC decision allowing refund of IGST on export of zero-rated supplies

Awadkrupa Plastomech Private Limited 2021-TIOL-206-SC-GST

The Writ Petition filed by the Respondent was allowed by the HC wherein it was held that the drawback rates being same, it only represented the Customs elements excluding Central Excise and Service Tax elements, which does not get subsumed with the GST. Thus, there being no point of availing double benefit i.e., IGST refund and higher duty drawback. Basis the above, IGST refund was allowed along with interest. Aggrieved by the same, the Revenue filed the current Appeal.

Referring to the decision of the Division Bench of Gujarat HC in the same case in [2020-TIOL-2238-HC-AHM-GST], the SC held that the Respondent had claimed IGST export refund only to the extent of the customs component and there was no error in the finding of the HC decision. Accordingly, the Appeal had been dismissed.

Authors' Note

There have been several instances where taxpayers have to resort to litigation at Tribunal level in order to obtain specific relief and direction for grant of IGST refunds. This results in unreasonable delay in grant of refund of IGST which impacts the exporters and its business as a whole. Similar to the case in hand, the Gujarat HC in the case of Amit Cotton Industries [2019-TIOL-1443-HC-AHM-GST] had been held that claim of duty drawback cannot be considered as a valid reason for unreasonably withholding IGST refunds.

Bangalore Tribunal allows refund of unutilised cess u/s. 11B post GST implementation

Kirloskar Toyota Textile Machinery Private Limited
2021-TIOL-518-CESTAT-BANG

The Appellant, engaged in the manufacture of parts and accessories of textile machinery and export of services had claimed refund of accumulated cess u/s. 11B of the Excise Act, as such cess could not be utilized towards taxable supplies under existing law and also not transitioned into GST. The said application had been rejected by the Revenue on the ground that transfer of cess is restricted u/s. 140(1) of the CGST Act. Aggrieved, the Appellant preferred an Appeal before the Tribunal.

The Bangalore Tribunal observed that the Appellant had filed the refund application within a period of 1 year from the introduction of GST Law. It further observed that, the introduction of GST had restricted such cesses to be transitioned into GST by virtue of Section 140(1) of the CGST Act. The Tribunal further took note that the instant issue had been considered by the New Delhi Tribunal in the case of Bharat Heavy Electricals Limited **[2020-TIOL-1341-CESTAT-DEL]**, wherein the Tribunal after relying upon the decisions of the Apex Court in case of Eicher Motors Vs. UOI reported in 1999 (106) E.L.T. 3 (S.C) and also the decision of the Karnataka HC in the case of Slovak India Trading Co. Private Limited **[2006-TIOL-469-HC-KAR-CX]** had allowed the appeal of the assessee relating to refund of cesses under the existing law.

Accordingly, it was held that as the judgement in Slovak India (supra) is passed by the jurisdictional HC, the same would prevail over other judgements. Accordingly, by following the ratios of the Delhi Tribunal in the case of Bharat Heavy Electricals Limited (supra) and Slovak India Trading Co. Private Limited (supra), the Bangalore Tribunal allowed the Appeal.

Bangalore Tribunal allows availment of CENVAT credit on 'passenger lift'

Divya Sree ROW Projects LLP
2021-TIOL-537-CESTAT-BANG

The Appellant, engaged in the construction of complex, building, civil structures, had imported 'passenger lifts' and availed the credit of CVD paid. However, upon scrutiny, the Revenue contended that lifts were capital goods and credit on such capital goods is not allowed and confirmed the demand on such credit availed along with interest and penalty. The said order had been confirmed by the Commissioner (Appeals). Aggrieved, the Appellant preferred an appeal before the Tribunal.

The Bangalore Tribunal observed that when the passenger lift was imported, it was classified under Chapter 84 and said classification was duly accepted by the Revenue. It was further observed that once the classification is accepted by the Revenue, it cannot be changed by the Revenue at a later stage. It further observed that the Revenue had ignored the actual nature of the work which was beyond the statutory provision. It was further observed that the imported lifts were used for the construction of building and the Appellant has used the capital goods for providing output service which also fulfils the conditions in terms of Rule 2(p) of CCR, which defines the term 'output services.' Accordingly, it was observed that the lift is not used for providing the service specified in the Negative List.

Further, the CESTAT also noted that the lift is essential for providing the output service and therefore, the Appellant

had duly fulfilled the conditions to avail the credit. It had been further observed that the lifts being fitted into the building does not have an impact on treatment of lifts as capital goods, since even after installation, the lift remains the same and it does not lose its individuality. In light of the above observations, the Tribunal held that the Appellant is entitled to CENVAT credit on lift which is capital goods and the denial of the same is not sustainable.

Authors' Note

The eligibility of credit in respect of capital goods, especially lifts and elevators, has always been a contentious issue, in the Excise regime, which has also been carried forward under GST. Under the excise regime, the Delhi Tribunal in the case of Bharat Aluminium Co. Limited **[2009-TIOL-601-CESTAT-DEL]** had allowed the CENVAT Credit of elevators. A similar decision was passed by the Gujarat Tribunal in the case of Brady and Morris Engg. Co. Limited **[2010 (262) E.L.T. 948]**.

However, under the GST regime, the Maharashtra AAR in the case of Las Palmas Cooperative Housing Society Limited **[2020-TIOL-30-AAR-GST]** had held that Lift, after erection and installation is an immovable property because it becomes a part of an immovable property, therefore credit cannot be allowed. As the instant judgement of the Bangalore Tribunal pertains to the excise regime, the matter is likely to be challenged further, given the ample favourable cases in similar matters.

Madras HC allows credit on invisible loss during manufacturing activity

R.K. Ganapathy Chettiar
2021-TIOL-1690-HC-MAD-VAT

The Applicant had filed a writ petition before the Madras HC challenging the assessment order requiring reversal of ITC on invisible loss, under the TN VAT Act occasioned during the process of manufacture of Ghee.

The Madras HC observed that the issue in the instant matter has already been decided by the Madras HC in the case of ARS Steel and Alloys International Private Limited [2021-TIOL-1393-HC-MAD-GST]. In this case, it had been held that the loss that is occasioned by the process of manufacture cannot be equated goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. The situations as set out above indicate loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.

Further, referring to the decisions in the matter of Rupa and Co. Limited [2015-TIOL-2125-HC-MAD-CX], it had been observed that the reversal of ITC, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived and such loss is not contemplated under the provisions of law. In view of the above, the HC allowed the Writ Petition.

Authors' Note

The issue relating to availement of credit in respect of inputs lost during manufacturing process persisted even under the erstwhile VAT and excise laws. The New Delhi Tribunal in the case of Cadbury India Limited [2015-TIOL-1407-CESTAT-DEL] had held that in case of inputs lost in work in process, the assessee is entitled to take CENVAT Credit. The instant judgement of the Madras HC will be a landmark under the GST regime as it brings a huge relief to the manufacturers.

Notification / Circular	
Notification No. 30/2021 – Central Tax dated 30 July 2021	**CBIC amends the CGST Rules in respect GSTR-9 and GSTR 9C** ▸ Every registered person, other than an Input Service Distributor shall furnish an annual return electronically for every FY in FORM GSTR-9 on or before 31 December following the end of such financial year through the common portal; ▸ Taxable person registered under composition levy scheme needs furnish the annual return in FORM GSTR-9A; ▸ An electronic commerce operator collecting tax at source shall furnish annual statement in Form GSTR-9B; ▸ In form GSTR-9C the need of CA Certification has been replaced with the self-certified reconciliation statement by the registered person, other than an Input Service Distributor;
Notification No. 31/2021 – Central Tax dated 30 July 2021	**Exempts certain taxpayers from requirement from filing of Annual Return** Exempt taxpayers having aggregate annual turnover upto Rs. 2 crores from the requirement of furnishing annual return for FY 2020-21
Notification No. 32/2021 – Central Tax dated 30 July 2021	**Extension for filing of returns through EVC** The filing of FORM GSTR-3B and FORM GSTR-1/ IFF by companies using electronic verification code ('EVC'), instead of Digital Signature certificate ('DSC') has already been enabled for the period from 27 April 2021 to 31 August 2021. This has been further extended to 31 October 2021
Notification No. 33/2021 – Central Tax dated 29 August 2021	**Waiver for non-furnishing of GSTR-3B for the tax period till April 2021** The CBIC vide Notification No. 19/2021- Central Tax dated 01 June 2021, had provided relief to the taxpayers by reducing / waiving late fee for non-furnishing FORM GSTR-3B for the tax periods from July, 2017 to April, 2021, if the returns for these tax periods are furnished between 01 June 2021 to 31 August 2021. The last date to avail benefit of the late fee amnesty scheme, has now been extended to 30 November 2021
Notification No. 34/2021 – Central Tax dated 29 August 2021	**Extension for filing of application for revocation of GST registration cancellation** The CBIC has extended the timelines for filing of application for revocation of cancellation of registration to 30 September 2021, where the due date of filing of application for revocation of cancellation of registration falls between 01 March 2020 to 31 August 2021. The extension would be applicable only in those cases where registrations have been cancelled for non-furnishing of returns for a continuous period

Authors' Note

On account of the difficulties faced during the COVID-19 pandemic, the registrations of a number of taxpayers had been cancelled. The instant benefit of extension of time limit for filing of application for revocation of cancellation of registration will be largely beneficial to such taxpayers.

Classification of bluetooth module under tariff entry 8517 62 90

Minda D-Ten Private Limited v. Commissioner of Customs (Import) 2021-TIOL-457-CESTAT-DEL

An appeal was filed by the appellant to assail the order of the respondent upholding the classification of Bluetooth module imported by the appellant under tariff entry 8529 90 90 as claimed by the Department as opposed to tariff entry 8517 62 90.

The appellant argued that for any product to be classifiable under the sub-heading 8517 62, it should receive, convert, and transmit voice, images and other data. The impugned goods do perform such functions as it receives, transmit and convert data, voice, etc. through radio frequency signals to enable connectivity between the mobile phone of the user and car infotainment system. The appellant further argued that Bluetooth module cannot be called as 'part' of car infotainment system for the reason that the car infotainment system can perform its function even without the Bluetooth module.

The Tribunal agreed with the submissions of the appellant and found that the Bluetooth module fall within the description of tariff sub-heading 8517 62. The Tribunal found that the respondent had incorrectly applied Section Notes 2(b), instead of 2(a) which inter alia stated that parts of goods in Chapter 85 are to be classified in their respective heading. The Tribunal also recorded that at many places, the respondent merely reproduced the order passed by the lower authority without recording its independent finding. This displayed non application of mind. Consequently, the Tribunal found the Bluetooth device to be classifiable under tariff entry 8517 62 90.

Authors' Note

The decision brings in clarity to the issue of classification of Bluetooth module. Considering the nature of the product, the Tribunal rightly classified the same under tariff entry 8517 62 90. Especially because the infotainment system could be used without the Bluetooth module, the module could not be considered to be a part of such system. In such a situation classification of the module in tariff entry 8529 90 90 would have been erroneous because the scope of the entry is restricted to cover only parts and not accessories such as the Bluetooth module.

Customs duty rate as applicable on the date of presentation of the bill of entry to be considered for payment of duty

Principal Commissioner of Customs v. M.D Overseas Limited Customs Appeal No. 51072 of 2020, Order dated 13.08.2021

The respondent/importer had presented the Bills of Entry with requisite data on 05.07.2019 on the ICEGATE portal for generation of the Bills of Entry numbers. Three Bills of Entry numbers could not be generated due to some technical glitch at the end of ICEGATE portal and also because of the fact that the Bills of Entry could not be processed after 5 pm on 05.07.2019 due to budget activity. The respondent, therefore, re-filed the Bills of Entry on 19.07.2019 and 20.07.2019 and three Bills of Entry numbers were generated then.

The issue before the Tribunal related to whether BCD would be levied at 9.35% as applicable on 05.07.2019 or at 11.85% as applicable on 19/20.07.2019. The court agreed with the submission of the respondent/importer that on account of Section 15 of the Customs Act, 1962 (which provides for the rate of Customs duty to be the rate applicable as on the date of presentation of bill of entry) the four Bills of Entry have necessarily to be assessed as per the rate of duty existing as on the date of presentation i.e.

on 05.07.2019.

Further, the Tribunal found that it was only on account of the fault of the Department that three Bills of Entry numbers could not be generated on 05.07.2019 and that proper documentation had been provided by the importer right at the outset. In come to this conclusion, the Tribunal also placed reliance on the decision of the Madras High Court in Vijaya Industrial Products (P) Ltd. v. Union of India 1995 (76) E.L.T. 531 (Mad.) on the same issue. The Tribunal found the decision of the Supreme Court in Union of India v. G.S Chatha Rice Mills, 2020 (374) ELT 289 (S.C) to not be applicable to the instant case as it did not deal with the issue of non-generation of Bills of Entry number.

Authors' Note

The decision is in line with the statutory provisions of the Customs Act, 1962 (Section 15 read with Section 46) which provides for Customs duty rate determination as on the date of presentation of Bill of Entry. The decision further clarifies the position that if despite presentation of Bill of Entry with relevant supporting documents, the Bill of Entry number is not generated on account of the fault of the Department, the assesse cannot be faulted for the same and the benefit of lower rate of duty ought to be provided.

Aircraft engine and stand not considered "part of aircraft" and relevant exemptions denied

Interglobe Aviation Ltd v. CC
2021-TIOL-429-CESTAT-BANG

The issue before CESTAT related to whether – (i) aircraft engine and stand are to be treated as imported into the country or shifted from Delhi to Bangalore (via Germany) as claimed by the appellants?. If so, whether they are eligible for the benefit of notification no. 94/96- Cus dated 16.12.1996 – which related to exemption on re-import of exported goods ? (ii) the impugned goods are to be treated as 'parts of aircraft' and whether the appellants can claim the benefit of exemption under notification no. 21/2002-Cus dated 01.03.2002(S1.No.346D) and notification No. 12/2012-cus dated 17.03. 2012 (SI. No. 354)? (iii) the demand can be sustained without reviewing/challenging the assessment in the Bills of Entry?

As regards the first issue, the plea of the appellant was that the documents filed at New Delhi clearly indicated that the goods are being shipped to Bangalore via Germany. No import documents were filed at Germany and the goods did not enter the German Customs Area. This plea was however rejected. The Tribunal agreed with the findings of the adjudicating authority that the shipping bills filed at Delhi indicated that the impugned goods were being exported for repairs and maintenance. The Tribunal also found that the benefit of notification 94/96 dated 16.12.1996 was not available to the appellants as the intention to re-import was not declared at the time of loading in Delhi. The Tribunal found that the appellants should have given proper intimation/declaration to the department as regards re-importation so that the department could have carried out the necessary examination/investigation.

In relation to the second issue, the case of the department was that the impugned goods are not classifiable as "parts of aircraft" as aircraft engines are distinct goods. The Commissioner inter alia rejected the argument of the appellant that condition 71 of Entry 446 of Not. 21/ 2002 - Cus by virtue of which parts of aircraft are said to include aircraft engine can be used to interpret Entry 454. In this regard, the Commissioner found that exemption notifications have to be strictly interpreted. The Court accepted the submissions of the Department and findings of the Commissioner. The Court also denied the application of Circular bearing D.O.F. No. 334/15/2014-TRU dated 10.07.2014 which clarified that "aircraft engines and parts thereof" are eligible for customs duty exemption under Sl. No. 454 of Notification No.12/2012-Cus, dated 17.03.2012. The court did not find it to be retrospectively applicable.

As regards the third issue, the Court found that the Department was permitted to issue a show cause notice without challenging the assessment in the bills of entry.

Amendment to bill of entry permitted at a belated stage

Sony India Ltd v. Union of India
2021-TIOL-1707-HC-TELANGANA-CUS

Refund of excess Customs duty typically follows the path of challenging the Assessment Order i.e. Bill of Entry itself under Section 128 of the Customs Act, 1962 ('Customs Act'). However, the Telangana High Court recently widened the jurisprudence on this issue. It analyzed Section 149, which provides for amendment of Bill of Entry, and referred to it as 'additional remedy'. It then held that refund could also be claimed by amending Bill of Entry.

The dispute had arisen when Sony India imported mobile phones, which were to be assessed for CVD with reference to Notification No. 12/2012 – Central Excise, which prescribed beneficial rate of 1% with a condition that no CENVAT Credit is availed on input and capital goods. This Notification also prescribed rate of 6% if the condition was not satisfied. Customs Act borrows this Notification from Excise regime, which is meant for goods manufactured in India. The revenue of the view that importer was not entitled for the beneficial rate. This view, however, did not sustain when Hon'ble Supreme Court in SRF Limited's case, settled the issue in favour of assesse.

Sony India now initiated application requesting amendment for BoE under Section 149 (since appellate remedy was time barred) followed by refund of excess CVD paid (i.e. differential between rate of 6% and 1%). This application was rejected citing BoE to be an appealable Order and that in absence of an Appeal under Section 128 by Sony India, these have attained finality.

This Order was challenged before Telangana High Court which allowed the Petition based on following findings:

- Section 149 of the Customs Act is an additional remedy available to the Petitioner to Seek amendment to BoE
- Hon'ble Supreme Court has recognized that BoE can be modified under relevant provisions other than Section 128 of the Customs Act
- Revenue's contention that 'reassessment under Section 128 is the only recourse' is thus untenable
- Section 149 does not prescribe any time limit for amending Bill of Entry
- Petitioner is compelled to seek amendment only due to incorrect determination of duty by authorities. It thus cannot be penalized for what authorities sought to have done correctly by itself.

Authors' Note

The Decision has provided for an alternative mechanism for re-assessing Bill of Entry by way of modification thereof under Section 149. Further, since Section 149 is not bound by any limitation, the decision also deems re-assessment beyond limitation.

With these developments, Importers may take a re-look at their past imports where excess duty was paid for one or the other reason, and can evaluate an option to claim refund thereof, even beyond limitation. The key here is having the right documentary evidence that existed at the time of clearance to support modification of Bill of Entry.

Madras HC orders for revalidation of meis scrips and holds that issuance of the same pre-supposes due application of mind as regards all relevant stipulation and conditions

Jindal Drugs Pvt Ltd v. Union of India
2021-TIOL-1628-HC-MAD-CUS

Assessee exported menthol and natural essential oils to buyer UTEXAM in Ireland and the supply of the consignment was through DHL Logistics, a Free Trade Warehousing Zone. To avail the benefit of MEIS scheme, the assesse made an application to Add. DGFT and was issued duty credit scrips 1,2,3 for the period 2018-20. However, assesse's request for registration of scrips No.1 and 3 to the Deputy Commissioner Customs was not accepted and the scrips were returned without registration. On a subsequent request for registration, an impugned order was issued rejecting the registration request on the basis that the supplies were made by the assesse, a DTA unit to DHL Logistics, a unit in FTWZ. This was a prohibited under the MEIS scheme. Consequently, writ petitions were filed for issuing registration.

While discussing the validity of the scrips, the Madras High Court observed that the procedure set out for issuance of scrips has been followed by the Add. DGFT. The issuance of the scrips pre-supposes due application of mind by Add. DGFT as regards validity of the scrip. Further, the court noted that in absence of procedure for cancellation having been invoked, the presumption is that the scrip are valid. The Court noted that DHL Logistics merely offers the petitioner to warehouse its consignment that are to be exported. The destination is decided by the UTEXAM which has paid the assesse in USD for the consignment. Therefore, such a transaction is not prohibited under MEIS. Consequently the Court allowed the assesse's writ petitions and the impugned order was set aside.

Authors' Note

The direction of the High Court to revalidate the scrip is appropriate. Once a duty credit scrip has been issued it is assumed that the scrip is valid and that inter alia an assesse is not undertaking a transaction prohibited under the scheme of MEIS. A similar presumption as regards the validity of the scrip also arises if an assesse has not invoked the procedure for cancellation of a scrip [Section 9(4) of the Foreign Trade (Development and Regulation) Act, 1992]. Once the scrips have been issued, Departmental rejection of the assesse's plea for registration would tantamount to a review order – which is not envisaged in law.

Notifications	Key Updates
Notification No. 42/2021-Customs (ADD) dated August 01, 2021	**Anti-Dumping duty on ' Wire Rod of Alloy or Non-Alloy Steel ' originating in or exported from China PR extended** The levy of Anti-Dumping Duty on 'Wire Rod of Alloy or Non-Alloy Steel' originating in or exported from China PR has been extended till January 31, 2022.
Notification No. 41/2021-Customs dated August 30, 2021	**CBIC extends exemption granted to Medical Oxygen, Covid vaccines** CBIC extends exemptions granted to Medical Oxygen, Covid vaccines, oxygen and oxygen equipments, from customs duty and health cess from August 31, 2021 to September 30, 2021

Circulars/Instructions	Key Updates
Instruction No. 17/2021 dated August 11, 2021	**CBIC issues clarification with reference to new version of web application for online filing of AEO T2 & T3 applications, allows physical filing till July 31, 2021** To combat the menace of importation of unauthorized wireless equipment including mobile signal booster/repeater into the country, CBIC reiterates the existing Import Policy provisions of DGFT viz. ITC HS Code of 2017 & its amendments, the mobile signal repeater/booster and walkie-talkie sets fall under the category of Transmission apparatus incorporating reception apparatus (ITC HS Code - 8525 60 00), classified under 'free' category under the Import Policy with the remarks under 'policy conditions ' that 'Not permitted to be imported except against a license to be issued by the WPC wing of Ministry of Communication and Information Technology'. CBIC also observes that unauthorized mobile signal repeaters/boosters are easily available in the grey market and on e- commerce platforms. Unauthorized operation of mobile signal repeater/booster has been a serious cause of concern for the licensed Cellular Telecom Service Providers (TSP) to maintain the desired quality of service (QoS) in light of the interference caused by such repeaters. Certain models of walkie-talkie sets are also available for sale on the e-commerce platforms without any compliance to the regulatory requirement of the Department.
Circular No. 19/2021-Customs dated August 16, 2021	**Pr. Commissioners/Commissioners of Customs to decide the amount of security required in cases of provisional assessments** Pr. Commissioners/Commissioners of Customs has been given the authority to decide the amount of security required in cases of provisional assessments.
Circular No. 20/2021-Customs dated August 16, 2021	**De-notification of Inland Container Depots/Container Freight Stations/Air Freight Stations** CBIC de-notifies Inland Container Depots (ICDs) or Container Freight Stations (CFSs) or Air Freight Stations (AFSs). CBIC noticed the difficulties faced by the custodians of Inland Container Depots (ICDs) and

Circulars/Instructions	Key Updates
	Container Freight Stations (CFSs) when they intended to wind up the operations in the facility and approach Customs formations for de-notification of the same. Reportedly, there is an inordinate delay in the de-notification in the absence of a specified procedure for de-notification. It is also reported that in such cases, the Customs field formations face challenges while ensuring timely payment of Cost Recovery Charges and disposal of uncleared, seized, and confiscated goods which are prerequisites for the de-notification. The facility will become ripe for de-notification if the various conditions are met, namely the application for de-notification is complete in all respects, There are no dues, including the duties on the uncleared goods that are eventually sold, pending to be recovered from the custodian, all uncleared goods lying at the facility have been cleared from the facility by disposal and/or shifting to any other facility in the jurisdiction of the Commissionerate, and all the detained or seized or confiscated goods lying at the facility are disposed and/or shifted out of the facility to another location for safe custody, and All the other items belonging to Customs such as office records, furniture, etc. are removed from the facility. The jurisdictional Principal Commissioner/Commissioner of Customs shall, after satisfying herself/himself that the facility is ripe for de-notification shall revoke the approvals granted under Sections 8 and 45 of the said Act.
Instruction No. 18/2021 dated August 17, 2021	**Verification of the Preferential Certificates of Origin and difficulties being faced by the trade in implementation of the Customs (Administration of Rules of Origin under Trade Agreements) Rules (CAROTAR), 2020.** CBIC observes that bulk verification requests are still being consistently referred from field formations to the Board for getting the verification done from Verifying Authorities in terms of Rule 6(1)(b) of CAROTAR, 2020, without citing appropriate grounds and without mentioning any specific information to be sought from the Verification Authority. Further, CoOs, particularly of RMS interdicted consignments, are being forwarded en masse to the Board for causing verification. Such a mechanical exercise is not only adversely impacting trade facilitation but is also putting a heavy burden on the Board office and the Verification Authorities to get such requests processed and attended to in prescribed time frame. It is to bring to the attention of the Trade that, CBIC mandates that only representative certificates should be forwarded to the Board for verification of the Preferential Certificates of Origin. CBIC clarifies that if the product of a given manufacturer has already been verified following the verification process, subsequent consignments of the same manufacturer imported with a claim to meet the same originating criteria, may not be considered for verification again; Highlights that upon forwarding verification request to CBIC under Rule 6(1)(b) of CAROTAR, 2020, the proper officer must clearly indicate the reason to believe why goods are not meeting the prescribed origin criteria and also enlist specific information required to be obtained from the Verification Authority that the officer considers necessary to determine

Circulars/Instructions	Key Updates
	the origin; In this context, states that the verification requests should be communicated to the CBIC within the prescribed timelines of CAROTAR, 2020 and by strictly following prescribed standard procedures, formats and timelines.
Instruction No. 19/2021 dated August 17, 2021	**Instructions and clarifications by Directorates/Commissionerates/Audit: Scope of Section 151 A of the Customs Act, 1962** In an instruction to all Principal Chief Commissioners of Customs, the Central Board of Indirect Taxes and Customs (CBIC) said in order to establish a standard practice on all matters of classification of goods, with respect to levy of duty and for the implementation of any other provision of the Customs Act, 1962, directorates/commissionerates/audit will not issue any circular which are in the nature of clarification or interpretation. Clarifications on all such matters would be issued by the CBIC under Section 151A of the Customs Act, 1962. Section 151A of the Customs Act, 1962 empowers CBIC alone to issue instructions/ directions for the purpose of uniformity in classification of goods or with respect to levy of duty, or for the implementation of any other provision of the Act or of any other law which relate to import or export of goods. The CBIC further stated that matters covered under Section 151A require wide ranging consultations involving multiple stakeholders, ministries and also international organisations. In such cases, referring such matters to the Board would enable undertaking a holistic analysis of such issues and ensure a consolidated view point to avoid unnecessary disputes and litigation.

Notifications/Trade Notices/Public Notices	Key Updates
Trade Notice No. 13/2021-22 dated August 4, 2021	**Uploading of e-BRC for shipping bills with LEO upto March 31, 2020 on which RoSCTL scrip has been claimed from DGFT RAs.** DGFT directs all IECs/Firms to upload e-BRC for shipping with LEO upto March 31, 2020 on which RoSCTL scrip has been claimed from DGFT Ras by September 15, 2021 failing which action shall be taken by the RA as per the recovery mechanism enshrined in Para 4.96 of HBP.
Trade Notice No. 14/2021-22 dated August 4, 2021	**Online Procedure for transfer of Advance Authorisation/EPCG Authorisation in case of amalgamation/de-merger/acquisition etc.** DGFT notifies online procedure to provide for online filing and transfer of Advance Authorization(s) and EPCG Authorisation(s) from the earlier entity to the new entity(s). The detailed steps are as follows: - i. Applicant would request for amalgamation/de-merger/ acquisition of IEC by navigating to DGFT Website -- > Services -- > IEC Profile Management -- > 'Request for Merger/De-merger'. The given process is implemented as per Public Notice 34/2015-2020 dated 24.12.2020 ii. Post approval of the given IEC request, the firm may apply for amendment of each of their AAIEPCG authorizations separately. The request may be submitted on the DGFT Website -- > Services -- > AA (or EPCG) -- > Transfer of Authorisation iii. The request for amendment of the Authorisation(s) would be auto-submitted to the concerned jurisdictional RA from the which the Authorisation was issued. iv. On approval of the request the given authorization would be amended and updated details would be transmitted electronically to Customs. v. For EPCG authorizations, for the Annual Average Export Obligation (AEO) mentioned on EPCG authorizations, Company A (EPCG authorization holder merging into Company B) the AEO of new entity = AEO of Company A + AEO of company B based on date of merger. vi. For the purpose of AEO of company B, firm would be required to submit Chartered Accountant Certificate (CAC) to the concerned RA as part of the online amendment request. vii. SIBs and B/Es under the earlier IEC would be available under Bills Repository of the new IEC during the authorization closure process.
Public Notice No. 20/2015-2020 dated August 6, 2021	**Amendment in Paras 4.82, 4.83, 4.84 of Hand Book of Procedure (HBP) 2015-20.** DGFT makes Amendments in Para 4.82, 4.83, 4.84 of Hand Book of Procedure 2015-20 purely as a onetime temporary measure in view of difficulties expressed by the trade due to COVID -19 situation by inserting Para 4.85B which provides that where the last date for

Notifications/Trade Notices/Public Notices	Key Updates
	exports/replenishment/imports/drawal of precious metal as calculated under various sub paras of Paras 4.82, 4.83, 4.84 of Handbook of Procedure, 2015-20 expires between 01.02.2021 and 30.06.2021, such last date stands extended by six months. However, relaxation in the period for repatriation/forex realisation would be equal to the period as allowed plus six months or as per RBI guidelines, whichever is less.
Trade Notice No. 15/2021-22 dated August 9, 2021	**Procedure and Criteria for submission and approval of applications for export of Diagnostic Kits and their components/laboratory reagents** The DGFT notifies the procedure and Criteria for submission and approval of applications for export of Diagnostic Kits and their components/laboratory reagents. As the quota for the applications received as per the Trade Notice were issued export licenses and the quota had not been exhausted, DGFT notifies that Export of Diagnostic kits and their components/laboratory reagents leftover export quota is available and Exporters are requested to apply for an export license by filing applications online through DGFT's ECOM system for Export authorizations (Non-SCOMET Restricted items). There is no need to send any hard copy of the application via mail or post. If in case the Exporters who have already filed an online application for the export of these diagnostic kits after February 1, 2020, need not apply again. However, they need to write a mail with the application file number and also submit the documents as described in this trade notice through email at export-dgft@nic.in mentioning the specific file number in the subject of the mail. Online applications for export of "Diagnostic Kits (VTM/RNA Extraction kits/RT-PCR Kits) or their components/laboratory reagents" for the above quantities may be applied from 4th March to 9th March, 2021. It is noteworthy that Validity of the export license will be for 6 months only. The eligibility criteria which will be applicable for consideration of applications namely Documentary proof of manufacturing "VTM/RNA Extraction kits/RT-PCR Kits and Only 1 application per IEC may be considered during this period. The documents to be submitted may include the Copy of Purchase order /Invoice, Copy of IEC, and Undertaking duly signed by the authorized signatory in the company letter head to be submitted by the manufacturer certifying that as on date, all domestic commitments/ orders have been fulfilled. All the documents must be duly self-attested by the authorized person of the firm.
Notification No. 16/2015-2020 dated August 9, 2021	**Extension in period of modification of IEC and waiver of fees for IEC updation done during August, 2021** Period of modification of IEC is extended for the year 2021-22 only till August 31, 2021, and no fee shall be charged on modifications carried out in IEC during the period upto August 31, 2021.

Notifications/Trade Notices/Public Notices	Key Updates
Notification No. 17/2015-2020 dated August 10, 2021	**Amendment in Para 2.07 of Foreign Trade Policy, 2015-2020** DGFT amends Para 2.07 of the FTP regarding principles of prohibition and restrictions, to bring it in line with international agreements.
Notification No. 18/2015-2020 dated August 16, 2021	**Amendment in Export Policy of COVID-19 Rapid Antigen testing kits** The export of COVID-19 Rapid Antigen testing kits has been restricted.
Notification No. 19/2015-2020 dated August 17, 2021	**Scheme Guidelines for Remission of Duties and Taxes on Exported Products (RoDTEP)** DGFT notifies the guidelines, ineligible supplies, categories, items and rates for the eligible export items under the Remission of Duties and Taxes and Exported Products ('RoDTEP') scheme. The eligible export items along with their rates and per unit value caps under the RoDTEP scheme have been prescribed by DGFT in Appendix 4R.

HC directs status quo due to non-functioning of PMLA Appellate Tribunal

Puja Kumari vs. Directorate of Enforcement & Ors.
W.P.(C) 8653/2021 & CM APPL. 26783/2021 (stay), CM APPL. 26784/2021(exemption)

Due to the non-functioning of the PMLA Appellate Tribunal, Delhi HC allowed writ petition seeking to restrain ED from taking any steps in furtherance of order passed by PMLA Adjudicating Authority confirming a provisional attachment order.

Accordingly, Delhi HC directed parties to maintain status quo till the Petitioner's statutory appeal and stay application, which she undertook to file within a week, were taken up for consideration by the PMLA Appellate Tribunal, as and when it became operational.

The Petitioner had submitted that she was desirous of filing a statutory appeal before the PMLA Appellate Tribunal, however, the said Tribunal was presently not functional and taking advantage of the said fact, ED had proceeded to issue a possession notice in pursuance to the impugned order.

Court noting that ED was unable to dispute the fact that the PMLA Appellate Tribunal was presently not functional for want of quorum, allowed the instant petition stating that this order will merge with any order as may be passed by the Tribunal in petitioner's appeal and stay application, as and when it becomes operational.

Authors' Note

The HC has rightly allowed this Petition, protecting the Petitioner from unnecessary harassment by ED for the time the PMLA remains in-operation, by directing the parties to maintain status quo, the HC has ensured that the Petitioner's case is fairly heard and disposed of.

HC holds security interest favoring Bank overrides tax dues, given non-obstante clause under SARFAESI Act

State Bank of India vs. Union of India & Ors.
Writ Petition No. 20646 of 2020

The State Bank of India (Petitioner) along with other consortium banks, had granted a loan amounting to INR 133 crores to the Respondent No. 5 in 2012 for Working Capital, and as security for the said loan, a commercial unit belonging to the said Respondent No. 5 was charged to the Bank along with other properties.

The said charge was registered with the Central Registry of Securitization Asset Re-construction and Security Interest of India (CERSAI) on April 8, 2000.

As the Respondent No. 5 did not repay the loan dues, and committed default in making re-payments to the petitioner, the loan account of the Respondent No. 5 was declared as a Non-Performing Asset on September 13, 2012.

Thereafter, proceedings under the SARFAESI Act, 2002 were initiated and the property was put to public auction on September 26, 2020.

M/s.Khargandhi Properties Pvt. Ltd. (for short 'the auction

purchaser') was declared highest bidder for INR 4.66 Crores, and their bid was confirmed. They were asked to pay the balance amount in accordance with the provisions of the said Act.

The auction purchaser through a letter informed the Bank that it came to know that property purchased by it in e-auction from the petitioner-Bank had Income Tax attachments and so, it could not be registered in view the fact that the property was kept under a prohibitory list under the Registration Act, 1908, and wanted to resile from the auction proceedings.

The Petitioner then verified the same and confirmed that the property was in the prohibitory list register maintained by the Sub-Registrar, Shamshabad (Respondent No. 2) in view of proceedings issued by the Commercial Tax Officer, Special Commodities Circle, Saroornagar Division, Hyderabad (Respondent No. 3) and proceedings of the Dy.Commissioner of Income Tax, Circle-2 (3), Hyderabad (Respondent No. 4).

In the letter addressed to Respondent No. 2 by Respondent No. 3 it was stated that the Respondent No. 5 had fallen in arrears of sales tax to the tune of INR 3,05,89,201/-, that it owned the subject property, and requested Respondent No. 2 not to permit alienation thereof as it had first charge under the provisions of the TVAT Act, 2005 over the said property.

Aggrieved, the Petitioner preferred a writ before the HC contending that proceedings issued by the tax department could not debar the Petitioner from auctioning the secured asset under SARFAESI Act, and executing a sale deed in favour of the auction purchaser. The Petitioner also contended before the HC that the Sub-Registrar could not refuse to receive the document for registration by keeping the subject property in the prohibitory list owing to alleged tax dues.

The HC observed that once the security interest created in favour of the Bank was registered with CERSAI, the non-obstante clause of the SARFAESI Act, 2002 would come into play and override the provision of the Telangana VAT Act or the order of attachment issued under the Income Tax Act.

Further analysing Sec. 26-E of the SARFAESI Act, HC observed that the said provision gave priority to claims of secured creditors like the Petitioner over the dues of the State such as Service Tax dues/Income Tax dues and the non obstante clause therein overrided the provisions of the Income Tax Act, 1961 and the Telangana VAT Act, 2005. Accordingly, the HC issued a writ of mandamus directing the concerned Sub-Registrar to receive the sale deed submitted by the Petitioner for transfer of property and register the said property in auction purchaser's favor within 4 weeks.

Authors' Note

This decision has re-emphasized the fact that secured creditors interest is protected and the hierarchy of security interest as contemplated by SARFAESI act is protected at all times. The mere fact that there is a tax liability and revenue has attached the property does not dilute the secured creditor's interest.

SC divided over appeal challenging insistence on Bank-guarantee of 'Scheduled Indian Bank'

SEPCO Electric Power Construction Corporation vs. Power Mech Projects Ltd. 2021-TIOLCORP-31-SC-MISC

The Appellant preferred an appeal before the SC against the order of the Division Bench of the HC challenging the HC's refusal of a legally valid irrevocable Bank Guarantee of INR 30 Crores issued by the Industrial and Commercial Bank of China Limited ('ICBC')(which is a Scheduled Bank included in the Second Schedule of the Reserve Bank of India Act) and insisting the Appellant to furnish a fresh Bank Guarantee of the same amount, with identical terms,

issued by a "Scheduled Indian Bank", notwithstanding the expenditure incurred by the Appellant in obtaining the Bank Guarantee from ICBC.

SC observed that the RBI Act only defined 'Scheduled Banks' which included Scheduled Foreign Banks operating in India, and that the RBI Act or the Second Schedule thereto did not segregate Scheduled Indian Banks. Further, there was no definition of 'Scheduled Indian Bank' in the RBI Act, therefore, the regulatory provisions of RBI Act applied equally to all scheduled banks.

Thus, establishing ICBC's credibility to honour the Bank Guarantee and holding that the Special Leave Petitions deserve to be allowed, SC observed that it was incomprehensible why Scheduled Private Banks in India should be preferred to Scheduled Foreign Banks in India with high global rating, even though, some Scheduled Private Sector Banks have not even been running well.

On the other hand, the SC also expressed a divergent view, that the question whether there exists statutorily, a distinction between "a Scheduled Indian Bank" and "a Scheduled Bank located in India" does not arise for consideration in this case and thus it is fit to dismiss the Special Leave Petitions as not giving rise to any substantial question of law warranting interference under Article 136 of the Constitution.

NCLAT holds Adjudicating Authority must examine transaction's nature, quashes insolvency initiation basis absence of any document showing transaction in question was a loan transaction fitting the definition of Financial Debt

Pawan Kumar vs. Utsav Securities Pvt. Ltd. & Anr.
Company Appeal (AT) (Ins) No. 251 of 2020

The Financial Creditor was a NBFC having the Certificate of Registration issued by the RBI. The Financial Creditor had granted financial assistance to the Corporate Debtor for a total of INR 6.10 Crores through Bank Account.

The Corporate Debtor had paid interest of INR 6,05,718, once after deduction of TDS. Thereafter corporate debtor failed to pay interest. Therefore, the Financial Creditor vide a notice recalled the loan.

The Corporate Debtor had not liquidated the outstanding liabilities. Hence, the Financial Creditor filed an Application under Section 7 of the IBC before the NCLT.
The Corporate Debtor had filed reply and resisted the Application on various grounds inter alia lack of any contractual agreement, an undefined period of loan, absence of any agreement for payment of interest at any specific rate and that the said transaction did not fall within the definition of Financial Debt.

The NCLT admitted Financial Creditor's insolvent application as it found no substance in the defense raised by the Corporate Debtor and the transaction did not get vitiated for want of agreement in terms of Section 186(11) of the Companies Act 2013 (The Act). Thus, as the transaction in question fit the definition of financial debt, the NCLT admitted the Application under Section 7 of the IBC and initiated CIRP against the Corporate Debtor and appointed Insolvency Resolution Professional (IRP).

Being aggrieved with this order, the Appellant who was the ex-director of the Corporate Debtor preferred an Appeal before the NCLAT.

The NCLAT observed that the Adjudicating Authority had erroneously admitted the Application under Section 7 of the IBC, whereas, the Financial Creditor had failed to establish that the transaction in question was a Financial Debt and due and payable and the Corporate Debtor had committed default.

NCLAT further notes that there was no agreement of loan and interest between parties and that the Financial Creditor had not furnished any document to show that the transaction in question was a loan transaction, thus, NCLAT opined that in the absence of such Financial Contract, the Financial Creditor had failed to satisfy when the debt and interest became due and payable.

Therefore, NCLAT allowing the appeal dismissed the insolvency application and declared all other orders and actions taken pursuant to impugned order, as illegal thereby freeing the Corporate Debtor from all rigors of law.

Authors' Note:

While admitting the Application under Section 7 of the IBC, it is the duty of the Adjudicating Authority to investigate the real nature of the transaction in order to prevent any person from taking undue benefit of its provisions to the detriment of the rights of legitimate creditors.

NCLAT holds creditor cannot seek implementation of amount prayed for in Settlement Agreement as it would leave to unlawful enrichment of Operational Creditor

Maldar Barrels Pvt. Ltd. vs. Pearson Drums & Barrels Pvt. Ltd. Company Appeal (AT) (Ins) 872 of 2020

The Respondent-Corporate Debtor and the Appellant-Operational Creditor were engaged in business transactions in which the Corporate Debtor failed to pay an amount of INR 8,82,11,723/- to the Operational Creditor which was due and payable.

Consequently, the Operational Creditor filed Company Petition No. CP(IB) No.513/KB/2017 under Section 9 of the IBC for an operational debt of INR 8,82,11,723/- which included principal debt of INR 4,75,28,807/- and interest @ 21% per annum.

The NCLT admitted the Company Petition thereby initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

Subsequently, the Corporate Debtor approached the Operational Creditor with a Settlement Agreement under which the debt owed by the Corporate Debtor of inr 8,82,11,723/- to the Operational Creditor was fully and finally settled at a total amount of Rs.3.70 crores which was accepted by both parties.

As the case had by then escalated upto the SC, the SC took a copy of the Settlement Agreement on record by using its powers under Article 142 of the Constitution of India and set aside the order passed by the NCLT.

Under the Settlement, the Corporate Debtor undertook to pay in thirty-seven instalments, each of an amount of INR 10,00,000/-, on or before Day 21 of every month for the next 37 months starting from January 2018 (the first instalment to be paid on or before 15 January 2018) as full and final settlement of the operational debt. However, the Corporate Debtor defaulted multiple times and was now required to pay a lump sum amount of INR 9,41,85,391/- in accordance with the terms of the Settlement Agreement.

The Operational Creditor filed a fresh application under Section 9 of the IBC seeking initiation of CIRP against the Operational Debtor for non-payment of total due in accordance with the Settlement Agreement.

The application under Section 9 of the IBC was dismissed by the NCLT by holding that it was not the forum where parties could seek implementation of the Settlement Agreement and that too after the Appellant had accepted a major portion of the amount due.

The NCLT also observed that the amount prayed for by

Operational Creditor as operational debt would lead to unlawful enrichment in case the application was accepted and that the Operational Creditor could take resort to other legal remedies available for enforcement of the Settlement Agreement if he so chooses.

Aggrieved the Operational Creditor approached the NCLAT which upheld the order of the NCLT.

Authors' Note:

Time is usually of the essence in Settlement Agreements. It would be interesting to note that the NCLAT also observed in the instant case that since the Appellant accepted delayed payments of certain instalments without raising a demur or objection, his conduct led the Respondent to believe that some delay in payment was acceptable to the Appellant which would prima facie imply that time was not of essence in the Settlement Agreement.

Extension of Scope of exemption from Online Test for Independent Directors

Companies (Appointment and Qualification of Directors) Rules, 2014 requires every individual whose name is included in the independent director data bank to pass the online proficiency self-assessment test within two years to maintain his name in the independent data base bank.

However, there was an exemption to certain category of individuals from passing above online test. MCA, thru the notification G.S.R. 579(E) dated August 19 2021, extended such scope of exemption by including new category of individuals.

Scope of exemption has been increased in following way:

Particulars	Old Scope	New Scope
Extension of Scope	Earlier, individual with pay scale of Director or above in the: - Ministry of Corporate Affairs, - Ministry of Finance, - Ministry of Commerce and Industry, - Ministry of heavy Industries and Public Enterprises And having experience in handling the matters relating to corporate laws or securities laws or economic laws, shall be exempted to pass above specified online test.	Now, individual with pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,- - The matters relating to commerce, corporate affairs, finance, industry or public enterprises; or - The affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities Shall be exempted to pass above specified online test.
Inclusion of New Scope	No such exemption	Following individuals, who are or have been , for at least ten years :- (A) An advocate of a court; or (B) In practice as a chartered accountant; or (C) In practice as a cost accountant; (D) In practice as a company secretary, Shall not be required to pass the online proficiency self-assessment test.

Authors' Note:

This is an important step to include people with noteworthy experience in list of available independent directors so that corporate India can have more experienced and independent board. In last year, MCA has specified a category of person who will be exempted from the requirement of online test. Scope of such exemption has again been extended by the MCA. Such exemption will enlarge the scope for the companies to have independent directors hailing from different fields. As the independent directors are required for the companies to have a vigilant mechanism over the companies' activities, this exemption will serve the above purpose.

Increase in FDI Cap for Insurance Sector

In the last budget, Hon'ble Finance Minister has proposed the increased FDI limit 74% from current threshold 49% under automatic route. To give effect to above proposal, following amendment have been made into Foreign Exchange Management (Non-debt Instruments) Rules, 2019 vide notification dated August 19th, 2021:

Updation of new FDI CAP for Insurance Sector:

FDI cap for insurance section has been increased to 74% from 49% under automatic route.

Changed requirement for Indian Insurance Companies:

Earlier, it was required for Indian Insurance companies to ensure that its control and ownership remains at all times in the hands of resident Indian companies.

Now, above condition has been revised and it requires that in case of Indian Insurance companies having foreign investment, following persons should be Resident Indian Citizens:

(i) Majority of its directors,
(ii) Majority of its key management persons **(KMP)**
(iii) At least one among the chairperson of its board, its managing director and its chief executive officer

Compliance with Indian Insurance Companies (Foreign Investment) Rules, 2015:

Indian insurance companies having foreign investment has to comply with provisions under the Indian Insurance Companies (Foreign Investment) Rules, 2015, as amended from time to time and applicable rules.

Composition of Management of insurance intermediaries:

Composition of Board of Directors and key management persons of Intermediaries or Insurance Intermediaries are required to be as specified by the concerned authorities from time to time.

Authors' Note:

This move is towards increasing FDI contribution in Indian economy. To attract more overseas capital inflows, FM has proposed the increased FDI limit in the insurance sector. Last year, Government has increased FDI limit in case of business indulging in digital media also.

This move will help increase avenues to bring in capital inflows in order to realise the full potential of Insurance in the country. This move will help strengthen the sector and also help further penetration of insurance in the country, which still is far behind the world average.

Revised definition of Promoters and relaxed lock-in period requirements

Vide notification no. SEBI/LAD-NRO/GN/2021/45 dated August 13, 2021, SEBI has provided following relaxations to the issuer company.

Revised definition of promoter group

The definition of promoter group includes an individual, its relatives, body corporate, subsidiary or holding company or such body corporate or a body corporate in which promoter holds 20% or more.

Earlier, this also included a body corporate in which a group of individuals or companies or combinations thereof acting in concert, which hold 20% or more of the equity share capital in that body corporate and such group of individuals or companies or combinations thereof also holds 20% or more of the equity share capital of the issuer and are also acting in concert. Now this clause has been

removed in order to simply the definition of promoters especially in the era of private equity investments and their cross holding in multiple entities.

Requirement	Existing lock-in period	Revised lock-in period
In case of IPO		
Lock-in period in case of minimum promoters' contribution	36 months from the later of: • Date of commencement of commercial production; or • Date of allotment	18 months from the date of allotment
Lock-in period in case of holding in excess of minimum promoters' contribution	12 months from the date of allotment	6 months from the date of allotment
Lock-in period in case of capital held by persons other than promoters	12 months from the date of allotment	6 months from the date of allotment
In case of FPO		
Lock-in period in case of minimum promoters' contribution	36 months from the later of: • Date of commencement of commercial production; or • Date of allotment	18 months from the date of allotment
Lock-in period in case of holding in excess of minimum promoters' contribution	12 months from the date of allotment	6 months from the date of allotment
Lock-in period in case of specified partly paid securities and amount called up on such securities is less than amount called up on securities issued to the public	36 months	18 months

Authors' Note:

It is a significant move that may benefit many new-age technology companies and firms backed by financial investors decided to ease the post-listing lock-in norms for both promoters and financial investors.

SEBI also decided to rationalize the definition of the promoter group in cases where the promoter of the issuer company is a corporate body to exclude companies having common financial investors in order to simplify disclosure requirements at the time of an IPO.

Release of FAQ on Corporate Social Responsibility

In January of this calendar year 2021, MCA has notified new companies CSR rules which we have covered in our previous edition as well.

On August 25, 2021, MCA has released a FAQ on such companies CSR rules to clarify many uncleared position on this new CSR policy.

FAQ on CSR has come up with many clarifications on various situations; few of key clarifications are as follows.

Question	Answer
Whether a holding or subsidiary of a company fulfilling the criteria under section 135(1) has to comply with the provisions of section 135, even if the holding or subsidiary itself does not fulfil the criteria?	No, the compliance with CSR requirements is specific to each company. A holding or subsidiary of a company is not required to comply with the CSR provisions unless the holding or subsidiary itself fulfils the eligibility criteria prescribed under section 135(1) stated above.
How is average net profit calculated for the purpose of section 135 of the Act? Whether 'profit before tax' or 'profit after tax' is used for such computation?	The average net profit for the purpose of determining the spending on CSR activities is to be computed in accordance with the provisions of section 198 of the Act and will also be exclusive of the items given under rule 2(1)(h) of the Companies (CSR Policy) Rules, 2014. Section 198 of the Act specifies certain additions/deletions (adjustments) to be made while calculating the net profit of a company (mainly it excludes capital payments/receipts, income tax, set-off of past losses). Profit Before Tax (PBT) is used for computation of net profit under section 135 of the Act.
Are administrative overheads applicable only for expenses incurred by the company, or can they be applied to expenses incurred by the implementing agency as well?	Expenses incurred by implementing agencies on the management of CSR activities shall not amount to administrative overheads and cannot be claimed by the company.
Whether CSR expenditure of a company can be claimed as a business expenditure?	No, the amount spent by a company towards CSR cannot be claimed as business expenditure. Income Tax Act, 1961 provides that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.
Whether contribution in kind can be monetized to be shown as CSR expenditure?	The requirement comes from section 135(5) that states that "The Board of every company shall ensure that it spends…" Therefore, CSR contribution cannot be in kind and monetized.

Authors' Note:

This is a welcome move. The broad framework of CSR has been provided in Section 135 of the Companies Act. Several significant developments have taken place since then. The Ministry has notified the amendments in Section 135 of the Act as well in the CSR Rules on 22nd January 2021 intending to strengthen the CSR ecosystem, by improving disclosures and by simplifying compliances. The Circular follows closely on the heels of the release of a report by the High Level Committee set up by the MCA to suggest measures for improved monitoring of the implementation of CSR policies in October 2015, and provides clarity on some of the topics covered in the report.

In response to such amendments, the Ministry has received several references and representations from stakeholders seeking clarifications on the various issues related to CSR.

Switzerland confirms withholding tax on dividends paid to India at 5%, expects reciprocity

On August 13, 2021, the Swiss Tax Authorities issued the notification clarifying that the dividend received by Indian residents from the Company based in Switzerland shall be subjected to withholding tax at 5% in Switzerland.

As per the most favoured nation clause, the Swiss notification clarifies that effective from July 5, 2018 / April 28, 2020 (as the case may be), dividends paid by Swiss companies to Indian shareholders shall be subject to withholding tax at 5% in Switzerland. Thereby, Indian tax residents receiving dividends after July 5, 2018 / April 28, 2020 (as the case may be) from the Swiss Company are entitled to claim refund of the additional 5% (10-5) withholding tax subject to the prescribed procedures.

However, the subject notification specifically states that if reciprocity in the interpretation of the most favoured nation clause is not guaranteed by the Indian Authorities, the Swiss Authority reserve the right to reverse this interpretation and to readjust the treaty rates applicable to income accruing as of January 1, 2023.

Application procedure for unilateral advance pricing arrangements has been simplified by the Chinese State Taxation Authority

The Chinese State Taxation Authority vide Notice No. 24/2021 dated July 30, 2021 has designed simplified application procedure for unilateral advance pricing arrangement. It has been announced that the same shall be implemented from September 1, 2021.

The general application procedure for unilateral, bilateral, or multilateral advance pricing arrangement includes six steps: pre-filing meeting, letter of intent, analysis and evaluation, formal application, negotiation and signing, and implementation and monitoring.

The simplified procedure cancels requirement of the pre-filing meeting. Further, the letter of intent, analysis and evaluation, and formal application steps have been consolidated into one. Thereby, the whole process is in three steps: application and evaluation, negotiation and signing, and implementation and monitoring.

In order to qualify, applicants must comply with one of following conditions:

1. The applicant ought to have submitted the transfer pricing documentation to the tax authorities for three years before the year of filing the application; or

2. The applicant must have implemented an APA in the past ten years before the tax year of filing the application and the implementation result should meet the APA requirements; or

3. The applicant should have been subjected to a transfer pricing investigation by the tax authorities in the past ten years before the tax year in which the application is filed, and the investigation has been closed.

Germany and USA publish a joint statement on the spontaneous exchange of CbC Reports for the year 2020

On August 10, 2021, the German Ministry of Finance published a joint statement from the German and USA's competent authorities on the implementation of the spontaneous exchange of country-by-country (CbC) reports for fiscal years beginning in 2020. Similar joint statements on the spontaneous exchange of CbC reports were also issued for the years beginning in 2016, 2017, 2018, and 2019.

The statement provides for an interim solution for the exchange of CbC reports. While Germany and the USA are negotiating an intergovernmental agreement and a competent authority arrangement to allow for the automatic exchange of CbC Reports, the competent authorities believe that the objectives of exchanging CbC reports (including assessing high-level transfer pricing and BEPS risks and economic and statistical analysis, where appropriate) should not be postponed until the already concluded agreement for the automatic exchange of CbC reports between Germany and the US is fully implemented.

Although, the intergovernmental agreement for CbC report exchange has already been signed, the competent authority arrangement has not been finalized yet.

RoDTEP – A second Class Export Incentive Scheme!

The Remission of Duties and Taxes on Exported Products ('RoDTEP') scheme had been introduced w.e.f. 01 January 2021. However, the scheme had been a pandora's box of difficulties and uncertainties, especially as the rates under the scheme had not been notified. In order to close such pandora's box, the Ministry of Commerce and Industry vide Notification No. 19/2015-2020 dated 17 August 2021 had issued guidelines to the RoDTEP Scheme and the applicable rates thereof.

Objectives of the Scheme

Following have been notified as the key objectives of the RoDTEP:

- To refund, currently unrefunded duties/ taxes/ levies at the Central, State and local level, borne on the exported product, including prior stage cumulative indirect taxes on goods and services used in the production of the exported product;
- To rebate indirect duties/ taxes/ levies in respect of distribution of exported product;
- Rebate shall not be available in respect of duties and taxes already exempted/ remitted or credited;
- Rebate would be granted to eligible exporters at notified rates as percentage of FOB value with a value cap per unit of the exported product;
- The Scheme would be implemented through end-to-end digitization of issuance of rebate amount in the form of a transferable duty credit scrip, which will be maintained in an electronic ledger by the CBIC;
- The scheme is effective from 01 January 2021;
- The e-scrips would be used only for payment of Basic Customs Duty; and
- As for the exports under the category of obligation against Advanced Authorisation or Duty-Free Import Authorisation or Special Advance Authorisation, products manufactured by a 100% EOU Unit and Products manufactured or exported by units in Free Trade Zone, Export Processing Zone or Special Economic Zone, the inclusion, applicable rates and implementation would be decided on the recommendation of the RoDTEP Committee.

Ineligible Categories

It has been provided that the following categories of exports/ exporters shall not be eligible for rebate under the RoDTEP Scheme:

- Export of imported goods;
- Exports through trans-shipment;
- Deemed Exports;
- Special Chemicals, Organisms, Materials, Equipment and Technologies ('SCOMET') items;
- Supplies of products manufactured by DTA units to SEZ/FTWZ units;
- Products manufactured in EHTP and BTP;
- Products manufactured partly or wholly in a warehouse;
- Products manufactured or exported in discharge of export obligation against an Advance Authorization or Duty-Free Import Authorization or Special Advance Authorization issued under a duty exemption scheme;
- Products manufactured or exported by any of the units situated in Free Trade Zones or Export Processing Zones or Special Economic Zones;
- Exported products availing the benefit of the Jobbing Notification No. 32/1997- Customs dated 01 April 1997; and
- Exports from non-EDI ports.

Rates under the RoDTEP

The RoDTEP rates are decided considering non-creditable duties / taxes / levies at the Centre / State /

Local level. It also considers the prior stage cumulative indirect taxes on goods and services used in production of an exported product. Vide Notification No. 19/2015-2020 dated 17 August 2021, the rates under the scheme have been notified, the highest being 4.3%, whereas, the lowest being 0.01%. The benefit rates under this scheme are rather low compared to the MEIS, however, this scheme certainly covers a lot more products.

Notably, the highest rate of 4.3% has been notified for exports of woven fabrics of cotton. On the contrary, Chapters 61, 62 and 63 which inter alia cover articles of apparel, are kept outside the purview of the RoDTEP Scheme. Similarly, the benefit of the Scheme has also not been extended to chemicals classifiable under Chapters 24-30. As for railway products classifiable under Chapter 8607, RoDTEP rate of 1.8% has been notified. However, for automobiles classifiable under Chapter 8708, a substantially lower rate of 0.5% to 1% has been notified.

Budgetary Limitations

It would be pertinent to note that the MEIS Scheme was an export incentive scheme which was notified to incentivize and promote the export of goods. However, the RoDTEP Scheme is a duty remission scheme which merely refunds the duties and taxes suffered by the exported goods. Therefore, there should not be any budget limit for RoDTEP Scheme or capping the benefit. Nonetheless, there a budgetary limit in the RoDTEP Scheme.

The Central Government has prescribed that the overall budget for the RoDTEP Scheme would be finalized by the MoF in consultation with Department of Commerce taking into account all relevant factors. The Scheme shall operate within a Budgetary framework for each financial year and necessary calibrations and revisions shall be made to the Scheme benefits, as and when required, so that the projected remissions for each financial year are managed within the approved Budget of the Scheme. Given the above-mentioned budgetary limitations, the RoDTEP Scheme is bound to struggle to match the popularity enjoyed by its predecessor MEIS.

IT CAN BE SEEN THAT THE RoDTEP SCHEME IS NOWHERE NEAR TO WHAT WAS EXPECTED OR IS REQUIRED BY THE EXPORTERS!

The Sparkle...

The fixing of the budgetary limit for RoDTEP Scheme may lead to reduction in rate of RoDTEP Scheme within the same financial year or fixation of cap on the amount of RoDTEP to be claimed per exporter, like MEIS Scheme. To counter this limit, the exporter may challenge the same by way of filing representations before the appropriate ministries, duly explaining the shortfalls of the Scheme.

It would be pertinent to note that instead of raising the spirits of the exporters, the announcement of rates has demotivated them given the negligible rates notified. A number of exporters have already begun filing representations before the Ministries to at least consider marginally higher rates of RoDTEP upon export of their products. The Scheme is in need of a much-required revamp and clarifications relating to RoDTEP applicability qua products manufactured in EHTP/BTP/bonded warehouse, etc.

In view of the above, it can be seen that the RoDTEP Scheme is nowhere near to what was expected or is required by the Exporters. It is merely a second-class incentive for the sake of compliance with the WTO guidelines. Although the rates under the scheme cannot be expected to be equal to MEIS rates, they certainly can be higher than those notified, such as 0.01%, which barely covers any non-creditable cost of the exporters.

GLOSSARY

Abbreviation	Meaning	Abbreviation	Meaning
AAAR	Appellate Authority of Advanced Ruling	ITA	Interactive Tax Assistant
AAR	Authority of Advance Ruling	ITAT	Hon'ble Income Tax Appellate Tribunal
ACIT	Assistant Commissioner of Income Tax	ITC	Input Tax Credit
AE	Associated Enterprise	ITES	Information Technology Enabled Services
ALP	Arm's Length Price	MAT	Minimum Alternate Tax
AMP	Advertisement Marketing and Promotion	MRP	Maximum Retail Price
AO	Assessing Officer	NAA	National Anti-Profiteering Authority
APA	Advance Pricing Agreement	NCLAT	National Company Law Appallete Tribunal
APU	Authorized Public Undertaking	NCLT	National Company Law Tribunal
AY	Assessment Year	OECD	Organization for Economic Co-operation and Development
BEPS	Base Erosion and Profit Shifting		
CASS	Computer aided selection of cases for Scrutiny	PCIT	Principal Commissioner of Income Tax
CBDT	Central Board of Direct Taxes	PLI	Profit Level Indicator
CBEC	Central Board of Excise and Customs	R&D	Research and Development
CBIC	Central Board of Indirect Taxes and Customs	RFCTLARR Act	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act
CENVAT	Central Value Added Tax		
CESTAT	Custom Excise and Service Tax Appellate Tribunal	RoDTEP	Remission of Duties and Taxes on Export of Products
CGST Act	Central Goods and Services Tax Act, 2017	SC	Hon'ble Supreme Court
CIRP	Corporate Insolvency Resolution Process	SCM	Subsidies and Countervailing Measures
CIT(A)	Commissioner of Income Tax (Appeal)	SCRR	Securities Contracts (Regulation) Rules, 1957
CLU	Changing Land Use	SLP	Special Leave Petition
CSR	Corporate Social Responsibility	TCS	Tax Collected at Source
CWF	Consumer Welfare Fund	TDS	Tax Deducted at Source
DCIT	Deputy Commissioner of Income Tax	The CP Act	The Consumer Protection Act, 2019
DGAP	Directorate General of Anti-Profiting	The IT Act/The Act	The Income-tax Act, 1961
DGFT	Directorate General of Foreign Trade	The IT Rules	The Income-tax Rules, 1962
DRP	Dispute Resolution Panel	TPO	Transfer Pricing Officer
Finance Act	The Finance Act, 1994	UN TP Manual	United Nations Practice Manual on Transfer Pricing
GST	Goods and Services Tax	VAT	Value Added Tax
HC	Hon'ble High Court	VSV	Vivad se Vishwas
IBC	International Business Corporation	NeAC	National e-Assessment Centre
IGST	Integrated Goods and Services Tax	The LT Act	The Limitation Act, 1963
IGST Act	Integrated Goods and Services Tax Act, 2017	CIRP	Corporate Insolvency Resolution Process
IRP	Invoice Registration Portal	MPS	Minimum Public Shareholding

PUBLISHER & AUTHORS

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RAJAT CHHABRA
(Partner)

KETAN TADSARE
(Associate Partner)

DHRUV BHATTACHARYA
(Associate Director)

RAGHAV PRASAD
(Associate)

GARGEE PADHI
(Associate Trainee)

GANESH KUMAR
(Partner)

BHAVIK THANAWALA
(Associate Partner)

RUSHABH LUHAR
(Associate Manager)

SAKINA LAXMIDHAR
(Associate)

VIREN NANDA
(Tax Executive)

VISHAL GUPTA
(Partner)

GAURAV AGARWAL
(Manager)

MOHIT SHARMA
(Associate)

PRASHANT SHARMA
(Associate)

ANAY GULATI
(Associate)

FIRM INTRODUCTION

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RAJAT CHHABRA
Taxcraft Advisors LLP
Founding Partner
rajatchhabra@taxcraftadvisors.com
+91 90119 03015

GANESH KUMAR
GST Legal Services LLP
Founding Partner
ganesh.kumar@gstlegal.co.in
+91 90042 52404

VISHAL GUPTA
VMG & Associates
Founding Partner
vishal.gupta@vmgassociates.in
+91 98185 06469

TAXINDIAONLINE.COM

RICHA NIGAM, Marketing Head, TIOL Pvt. Ltd.

richa@tiol.in | +91 98739 83092