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SHAPING A VIBRANT INDIA

GST Compendium

A monthly guide

May 2021

Editor’s note

As the country grapples with the second wave of the COVID-19 pandemic, we hope you and your family are staying safe.

Recently, the Central Board of Indirect Taxes and Customs (CBIC) has exempted the custom duty and health cess on import of various medical essentials and oxygen-related equipment. Further, an expeditious and seamless customs clearance has been ensured for all such imports. Besides, a dedicated COVID-19 helpdesk is operationalised to address queries on the imports and to handhold trade and industry for seamless customs clearance.

On the judicial front, the Madras HC has held that the legitimate export incentives given to exporters cannot be denied merely because of intervening changes in the law i.e. introduction of the GST. The judgment is likely to set a precedence in similar matters and help clear the pendency of refund claims for exporters.

On the legacy issue of taxability of vouchers, the Tamil Nadu Appellate Authority for Advance Rulings has observed that vouchers are neither goods nor services but are a means/instrument for payment of consideration. This is a welcome ruling and provides much-required clarity on the taxability of vouchers.

On the direct taxes front, the Finance Act, 2021 has brought in amendments to address stakeholder’s concerns, which, inter-alia, include the applicability of equalisation levy in certain cases, an adjustment in a block of assets due to the non-availability of depreciation on goodwill and manner of working out consideration in slump sale cases. Other key highlights from the direct tax perspective are an extension of timelines considering the hardships faced by stakeholders on account of the second wave of the COVID-19 pandemic, composition of the GAAR Approving Panel to adjudicate, if GAAR is triggered in any particular case, and deferment of GAAR and GST-related reporting in the tax audit report till 31 March 2022.

Cryptocurrency is a much-discussed topic these days. We have shared our perspective on it.

Please stay safe, wear mask and maintain social distancing.

Vikas Vasal

National Managing Partner, Tax

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01 Important amendments/updates

COVID-19-related measures by the government

Considering the second wave of the COVID-19 pandemic, the Central Board of Indirect Taxes and Customs (CBIC) has provided certain measures as under:

Key reliefs notified

Reduction in rate of interest for delayed payment of taxes

Category of taxpayer	Tax periods	Interest rate (applicable from the due date to date of payment)
Aggregate turnover above INR 5 crore	for the month of March and April 2021	• 9% - for the first 15 days • 18% thereafter
Aggregate turnover up to INR 5 crore	for the month of March and April 2021	• Nil - for the first 15 days • 9% - for the next 15 days • 18% thereafter
Taxpayers under composition scheme	for the quarter ending 31 March 2021	• Nil - for the first 15 days • 9% - for the next 15 days • 18% thereafter

Waiver of late fees for delay in furnishing return in Form GSTR-3B for tax periods March and April 2021

Category of taxpayer	Waiver of late fees
Aggregate turnover above INR 5 crore	• Late fee waived for 15 days
Aggregate turnover upto INR 5 crore	• For taxpayers filing monthly returns - late fee waived for 30 days • For taxpayers filing quarterly returns under QRMP scheme for January to March 2021 - late fee waived for 30 days

Extension of due dates

Type of return	Tax periods	Revised due date
Form GSTR-1	April 2021	26 May 2021
Form GSTR-1 using IFF	April 2021	28 May 2021
Form GSTR-4	FY 2020-21	31 May 2021
Form ITC-04	January to March 2021	31 May 2021

Relaxation in restriction of Input Tax Credit (ITC)

Restriction of 5% cap on ITC in Form GSTR-3B shall be applicable on cumulative basis for period April and May 2021, to be applied in the return for tax period May 2021.

Extension in timelines for completion of various actions by any authority under GST law

- Time limit for completion of following actions by authorities, which falls during the period from 15 April 2021 to 30 May 2021, has been extended up to **31 May 2021** (except certain provisions):
  - completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called; or
  - filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the certain acts.
- Time limit for completion of various actions by the authorities pertaining to verification and approval of application for registration which falls during the period from the 1 May 2021 to 31 May 2021 and where completion of such action has not been made within such time shall be extended up to **15 June 2021**.

Exemption from customs duty leviable on import of Remdesivir injection, its API and raw material

Exemption has been provided from the custom duty leviable on the import of Remdesivir injections, active pharmaceutical ingredients and Beta Cyclodextrin (SBEBCD) used in manufacture of Remdesivir[1]. The exemption shall remain in force up to **31 October 2021[2].**

Exemption from customs duty and health cess leviable on import of oxygen, ventilators, COVID-19 vaccine, nasal masks, etc.

Exemption has been provided from customs duty and health cess leviable on import of following items until **31 July 2021:[3]**

1. Subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017
2. Notification No. 27/2021-Customs dated 20 April 2021
3. Notification No. 28/2021-Customs dated 24 April 2021

Sr. No.	Description of goods
1	Oxygen concentrator including flow meter, regulator, connectors and tubings
2	Medical oxygen
3	Vacuum Pressure Swing Absorption (VPSA) and Pressure Swing Absorption (PSA) oxygen plants, Cryogenic oxygen Air Separation Units (ASUs) producing liquid/gaseous oxygen
4	Oxygen canister
5	Oxygen filling systems
6	Oxygen storage tanks
7	Oxygen generator
8	ISO containers for shipping oxygen
9	Cryogenic road transport tanks for oxygen
10	Oxygen cylinders including cryogenic cylinders and tanks
11	Parts of oxygen concentrators, canister, filling systems, generator, storage tanks, VPSA, PSA, ASUs, cryogenic road transport tanks, ISO containers and cylinders used in the manufacture of equipment related to the production, transportation, distribution or storage of oxygen[4]
12	Any other device from which oxygen can be generated
13	Ventilators, including ventilator with compressors; all accessories and tubings; humidifiers; viral filters (should be able to function as high flow device and come with nasal canula)
14	High flow nasal canula device with all attachments; nasal canula for use with the device.
15	Helmets for use with non-invasive ventilation
16	Non-invasive ventilation oronasal masks for ICU ventilators
17	Non-invasive ventilation nasal masks for ICU ventilators
18	COVID-19 vaccine

COVID-19 Helpdesk for international trade-related issues

In order to monitor the status of export and imports and difficulties being faced by trade stakeholders in view of the surge of COVID-19 cases, the Directorate General of Foreign Trade Policy (DGFT) has operationalised a COVID-19 Helpdesk to support and seek suitable resolutions to issues arising in respect of International Trade[5].

This 'COVID-19 Helpdesk' would look into issues relating to Department of Commerce/DGFT, Import and Export Licensing Issues, Customs clearance delays and complexities arising thereon, Import/Export documentation issues, Banking matters etc. Helpdesk would also collect and collate trade related issues concerning other ministries/departments/agencies of central government and state governments and will co-ordinate to seek their support and provide possible resolution(s).

The taxpayers can access the helpdesk by navigating to the **DGFT Website (https://dgft.gov.in)** > Services > DGFT Helpdesk Service > 'Create New Request' > select the Category as 'Covid-19'. Alternatively, you may send your issues to email id: **dgftedi@nic.in** with the subject header: Covid-19 Helpdesk or call at Toll Free No 1800-111-550.

The status of resolutions and feedback may be tracked using the status tracker under the DGFT Helpdesk Services. Email and SMS would also be sent as and when the status of these tickets are updated.

CBIC expedites customs clearances of import consignments related to COVID-19 goods

The CBIC has requested all the customs formations to give high priority for customs clearance of import of goods relating to COVID-19 pandemic, including oxygen-related equipment[6].

4. Subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017
5. Trade Notice No. 02/2021-2022 dated 26 April 2021
6. Customs Notice No. F.No.450/117/2021-Cus-IV dated 23 April 2021

Relaxation from late cut for MEIS applications submitted till 30 September 2021

The Directorate General of Foreign Trade Policy (DGFT) has notified a relaxation in the 'late cut' applicable to Merchandise Exported from India Scheme (MEIS) applications for shipping bills with Let Export Date from 1 April 2019 to 31 March 2020 submitted till 30 September 2021.

Production Linked Incentive Scheme (PLI) for white goods

The government has approved a PLI Scheme for white goods (air conditioners and LED lights) to be implemented over the financial years from 2021-22 to 2028-29. The scheme proposes a financial incentive to boost domestic manufacturing and attract large investments in the white goods manufacturing value chain.

Key features of the scheme:

- **Target segments:** Support under the scheme will be provided to companies/entities engaged in manufacturing of components of air conditioners and LED lights both having large as well as normal investments in India as under:
  - Air conditioners (components – high-value Intermediates or low-value Intermediates or sub-assemblies or a combination thereof)
  - High-value intermediates (copper tubes, aluminum foil and compressors)
  - Low-value intermediates (PCB assembly for controllers, BLDC motors, service valves and cross-flow fans for AC and other components)
  - LED lighting products (core components like LED chip packaging, resisters, ICs, fuses and large-scale investments in other components, etc.)
  - Components of LED lighting products (like LED chips, LED drivers, LED engines, mechanicals, packaging, modules, wire wound inductors and other components)
- **Incentive:** The scheme shall extend an incentive of 4% to 6% on incremental sales (net of taxes) over the base year of goods manufactured in India and covered under target segments, to eligible companies, for a period of five years subsequent to the base year and one year of gestation period.
- **Eligibility:** Eligibility shall be subject to thresholds of cumulative incremental investment and incremental sales (net of taxes) of manufactured goods (as distinct from traded goods) over the base year for the respective year.
- **Base year:** FY20 shall be treated as the base year for computation of cumulative incremental investment and incremental sales (net of taxes) of manufactured goods (as distinct from traded goods) as well as for prequalification criteria.
- **Tenure:** Support under the scheme shall be provided for a period of five years subsequent to the base year as defined and one year of gestation period for fructifying investment to be implemented over financial year 2021-22 to 2028-29. The scheme shall be open for applications for a period of 6 months initially which may be extended.
- **Other conditions:** The first year of investment will be FY22 and the first year of incremental sale will be FY23. Actual disbursement of PLI for a respective year will be subsequent to that year. The applicant will have to fulfill both criteria of cumulative incremental investment in plant and machinery as well as incremental sales over the base year in that respective year to be eligible for PLI.

CBIC notifies Common Customs Electronic Portal

The CBIC had notified the common portal accessible through uniform resource locator (URL) https://www.icegate.gov.in as the Common Customs Electronic Portal for facilitating registration, filing of bills of entry, shipping bills, other documents and forms prescribed under the customs law or under any other law for the time being in force or the rules or regulations made thereunder[7], payment of duty and for data exchange with other systems within or outside India.

DGFT notifies mandatory annual updation of Importer Exporter Code between April and June

With an objective to prune out inactive Importer Exporter Codes (IECs) and incorrect IEC details, the Directorate General of Foreign Trade (DGFT) has notified a mandatory updation of IEC between April and June. Further, it has said the IECs not updated would be deactivated after June.

The updation process is automatic and no fee will be charged for it. It can be completed within 5-10 minutes. The exporters/importers with IECs that were deactivated due to non-compliance can get them automatically reactivated by following the updation procedure.

There are multiple authentication options, including Aadhaar e-sign, Individual Digital Signature Certificate (DSC), organisation-based DSC, and IEC-based DSC. Class – II or Class – III DSC can be used on the DGFT e-platform.

Maharashtra government announces scheme for withdrawal of pending assessment proceedings

The Maharashtra government had earlier framed a scheme for providing criteria for selective risk based assessments under the Mahasrahtra Value Added Tax Act, 2002 and the Central Sales Tax Act, 1956. In order to effectively utilise the available manpower for the disposal of pending work related to the GST, it became necessary to formulate the criteria for withdrawal of assessment proceedings. In such cases, likely revenue earnings are determined with the use of Business Intelligence Data Warehouse tools. In this regard, the Maharashtra government with a view to dispose pending legacy work under the existing Value Added Tax and Central Sales Tax expeditiously has announced a Scheme called the Maharashtra Value Added Tax Criteria for Selection (on the basis of probable revenue earnings) of the cases for Assessment (Amendment) Scheme, 2021[8].

Key features

- The scheme shall be applicable to all pending assessment proceedings as on 1 April 2021.
- The scheme aims at formulating the criteria for withdrawal of the assessment proceedings based on threshold revenue earnings, below which assessment proceedings may be withdrawn.
- Under the scheme, the likely revenue earnings in each such case will be determined with the use of the Business Intelligence Data Warehouse tools or such other electronic data mining tools.
- Once the list for withdrawal of the pending assessment proceeding is published on the official website, i.e. www.mahagst.gov.in, then it shall be deemed that the said assessment proceeding stands abated from the stage where it was left and no assessing authority shall be empowered to proceed further in respect of the pending assessment so withdrawn.
- The Commissioner shall from time to time publish the order containing the list of the cases where the pending assessment proceedings are withdrawn for each year on the Official Website of the Sales Tax Department.

7. Notification No. No. 33/2021-Customs (N.T.) dated 29 March 2021
8. Notification No. VAT-1521/CR 1/Taxation-1 dated 1 April 2021
9. Public Notice No. 49/2015-20 dated 31 March 2021

Karnataka Amnesty Scheme: Settlement of arrears under indirect tax legislation

Summary

The government of Karnataka, to complete the pre-GST legacy audit and clear tax arrears expeditiously, has introduced a scheme called the Karasamadhana Scheme, 2021 (Scheme) for waiver of penalty and interest under the erstwhile laws (relevant act).

Key features of the scheme

Relevant Act

- The Karnataka Sales Tax Act, 1957,
- The Karnataka Value Added Tax Act, 2003,
- The Central Sales Tax Act, 1956,
- The Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976,
- The Karnataka Tax on Luxuries Act, 1979,
- The Karnataka Agricultural Income Tax Act, 1957,
- The Karnataka Entertainment Tax Act, 1958,
- The Karnataka Tax on Entry of Goods Act, 1979

Applicability

- The scheme shall be applicable for assessments or reassessments completed till 31 July 2021 under the relevant Act.
- The last date to file application for settlement of dues shall be 31 October 2021.

Waiver

- 100% of arrears of penalty and interest payable by a dealer under the relevant Acts[10]
- 100% of penalty[11] levied for failure to furnish return[12]
- 100% of penalty[13] levied for failure to submit copy of the audited statement of accounts[14]
- 100% of penalty levied by the audit officer[15] for failure to submit copy of the audited statement of accounts.

Procedure

- Full payment of arrears of tax needs to be made on or before 31 October 2021 for availing the benefit of waiver of 100% of arrears of penalty and interest payable under the scheme.
- Only arrears of interest and penalty relating to the assessments or re-assessments already completed and to be completed on or before 31 July 2021 shall also be eligible for waiver under the scheme.
- Separate application for each assessment year in Annexure I/IA/IB/IC/ID to be submitted electronically through the website http://ctax.kar.nic.in or http://gst.kar.nic.in on or before 31 October 2021.
- The concerned assessing authority shall inform the dealer or person or proprietor within 15 days from the date of filing of application about the discrepancies if any.
- All payments should be made within 15 days from the date of receipt of information or on or before 15 November 2021.
- The applicant shall become ineligible to avail this scheme if any partial amount is still outstanding as arrears on the specified date.
- The assessing authority shall pass waiver order within 30 days from the date of making payment. The same shall be served on the dealer within 10 days from the date of such order.

Other key aspects

- The dealer shall withdraw any appeal or other application filed against the order or proceedings relating to arrears of tax, penalty and interest before any appellate authority or court before availing the benefit under this scheme.
- Any amount of penalty and interest paid at the time of filing an appeal or other application shall be eligible for adjustment towards arrears of tax outstanding for the assessment year for which the benefit of waiver is claimed.
- The dealer shall not be eligible for refund of any amount that may become excess as a result of such adjustment under this scheme.
- In respect of cases where any appeal or other application is not filed, the dealer shall not be eligible for refund of any penalty or interest already paid, either in full or partially, under this Scheme.

Our comments

Recently, the governments of Punjab and Madhya Pradesh had also introduced amnesty schemes in line with many other states.

Such schemes provide a one-time opportunity to the taxpayers to settle their past disputes and reduce pending litigation. Therefore, it is imperative that they undertake due evaluation and take maximum advantage of such opportunity.

10. relating to the assessments/re-assessments/ rectification orders already completed and as the case may be, to be completed on or before 31 July 2021 under the GST regime
11. U/s 72(1)(a) or 72(1)(b) of KVAT Act
12. Under the KVAT Act and consequential interest subject to the condition that admitted tax as per the return is paid in full
13. U/s 74(4) of KVAT Act
14. and consequential interest subject to the condition that admitted tax liability, if any, is paid in full.
15. u/s 72(3B) of KVAT Act

2a Key judicial pronouncements

HSD shall be available at the concessional rate of tax at 2% by declaration in Form C: Supreme Court

Summary

The Supreme Court (SC) of India in a recent matter[16] dismissed the Special Leave Petition (SLP) filed by the revenue and upheld the view of the Madras High Court which had held that the High Speed Diesel (HSD) purchases are allowed by issuing C Forms at the concessional rate of 2%. Therefore, members can purchase the HSD as usual, by issuing C Forms under Inter State Route by paying 2% CST.

Facts

- The Commissioner of Commercial Taxes, Chennai had issued a circular letter[17] to the effect that the Mines Nuclear Power Corporation, Spinning Mills, Blue Metal Crusher Unit, ILFS Tamil Nadu Power Company, Housing Promoters, etc. would not be entitled to purchase Petroleum Crude, High Speed Diesel, Motor Spirit (Petrol), Aviation Turbine Fuel, Natural Gas and Liquor at concessional rate of 2% against the Declaration in Form C.
- On a writ petition filed by the respondent[18] the circular was quashed.
- Therefore, an SLP was filed by the revenue before the SC.

16. Commissioner of Commercial Taxes v. Ramco Cements Ltd, SLP No. 15785-15788/2020.
17. dated 31-5-2012
18. Ramco Cements Ltd

Observations of the SC

- **In agreement with the view taken by other high courts:** The SC has agreed with the view of the Punjab and Haryana High Court[19], Jharkhand High Court[20] and other such seven high courts in similar matter.
- **Office memorandum issued by the Union of India:** Subsequent to decision[21] of the Punjab and Haryana High Court, the Union of India has chosen to act upon the said decision by issuing office memorandum[22] and directing all the State/ Union Territories to follow the decision of Punjab and Haryana High Court.

Our comments

This is a welcome judgment and in line with the decision of several high courts .

However, this decision may not be relevant post-Budget 2021 due to the amendment in the CST law, which nullifies the effect of Supreme Court decision.

Recovery to be made from defaulting seller instead of denying ITC to purchaser: Madras HC

Summary

The Madras High Court (HC) in a recent case has held that the purchaser/buyer cannot be asked to reverse input tax credit (ITC) availed when there is default on the part of the seller to discharge his tax liability to the government. The HC stated that strict action should have been taken against the seller and recovery proceedings should be initiated by the revenue before asking the purchaser to reverse the ITC.

Facts of the case

- The petitioner[23] is a trader in raw rubber sheets.
- It availed ITC on purchases made based on the returns filed by the seller. However, it was later on found that the seller had not paid its output tax liability to the government. Therefore, show cause notice (SCN) was issued to the petitioner and it was asked to reverse the ITC availed. Further, orders were passed levying entire liability on the petitioners therein.
- Therefore, the petitioner filed the present writ[24] challenging the said order.

Madras High Court's observations and ruling[25]

- **No action against seller:** The HC stated that if the tax had not reached the kitty of the government, then the liability may have to be eventually borne by one party, either the seller or the buyer. In the present case, the revenue does not appear to have taken any recovery action against the seller.
- **Strict action required against seller:** When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.
- **Impugned order suffers fundamental flaws:** The revenue didn't ensure the presence of the seller for the purpose of enquiry in spite of being insisted upon by the petitioner. Further, it assumed that there was no involvement of goods and the petitioner had availed ITC on basis of invoice raised. Therefore, the HC stated that the impugned order suffers from fundamental flaws and needs to be quashed.
- **Petition allowed:** Thus allowing the petition, the HC remitted the matter back to the revenue to conduct enquiry against the seller and initiate recovery action.

Our comments

This is an important and welcome judgment by the Madras HC, which will help provide the required clarity and also is likely to set precedence in similar matters.

Further, the Madras HC has reiterated that the authorities can catch the purchaser/buyer only after appropriate proceedings/enquiry has been done against the seller or it has exhausted all the exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets, etc.[26]

The Supreme Court in the case of Arise India Limited had earlier dismissed the special leave petition (SLP) filed by revenue and refused to interfere with the order of Delhi HC, which had held that the relevant provisions[27] under the VAT law are violative[28] to the extent they disallow the ITC to the purchaser due to default of selling dealer in depositing tax.

Recently, the Karnataka HC in the case of Simplex Infrastructures Ltd. has also held that the input tax credit cannot be denied in the hands of purchasing dealer merely on the ground that the selling dealer has not discharged his/her VAT liability.

19. CarpoPower Limited v. State of Haryana & Ors, SLP(C) no. 20572 of 2018.
20. Tata Steel Limited v State of Jharkhand, 2019 SCC Online Jhar1255
21. CarpoPower Limited v. State of Haryana & Ors, SLP(C) no. 20572 of 2018.
22. dated 1 November, 2018M/s D.Y.Beathel Enterprises
23. M/s D.Y.Beathel Enterprises
24. 2 W.P.(MD)Nos.2127 of 2021
25. Madras HC Order dated 24 February 2021
26. Press Release of 27th GST Council meeting held on4 May 2018
27. Section 9(2)(g) of the Delhi VAT Act
28. 6 Articles 14 and 19(1)(g) of the Constitution of India

Assessee entitled to right of choice between benefits where multiple benefits are available: Madras HC

Summary

The Madras High Court in a recent case held that an assessee is entitled to the right of choice as between benefits, where multiple benefits are available. The assessee must not be forced to avail exemption merely because it is available.

Facts of the case

- The assessee company[29] is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006.
- It was served a show cause notice (SCN) stating that the turnover from sale of rice bran oil was less than the prescribed limit and is eligible for exemption under the VAT Act.
- Therefore, the tax collected on the sales, admittedly remitted to the Department, was proposed to be forfeited and the input tax credit (ITC) claimed, proposed to be reversed, along with penalty.
- Another SCN was issued proposing to revise assessment of same period. The stand of the assessee was rejected therefore, it filed the present writ[30].

29. TCS Trade Links v. The State Tax Officer Namakkal (Town), 2021-TIOL-680-HC-MAD-VAT
30. WP No. 33280 of 2019 WMP Nos. 33743 & 33744 of 20191

Madras High Court's observations and ruling[31]

- **Assesse has right to choose:** Referring to the SC judgment's[32], the Madras HC stated that the assesse is entitled to the right of choice as between benefits, where multiple benefits are available.
- **Assessee cannot be forced:** The petitioner must not be forced to avail exemption merely because it is available. It is left to an assessee to decide how it wishes to arrange or organise its financial matters as long as such arrangement falls within the four corners of the law.
- **Assessee is free to choose if he wants to avail exemption:** An assessee is thus at liberty to eschew an exemption offered, and take /suffer the consequences. It must have freedom to choose whether or not it wishes to avail of the benefit offered.
- **Exemption is an option:** The exemption available is an option that has not been availed by the present petitioner and there is no legal flaw in the choice made. The petitioner will have to sink or sail on the basis of the decision taken by it, qua exemption. In this case, the petitioner has, while eschewing exemption, claimed ITC on purchases.
- **No bar under law to avail credit:** The petitioner is admittedly a dealer whose turnover far exceeds the threshold of taxability. It is only by virtue of the exemption provided under schedule that it might escape taxability, if it so chooses. Such choice must be its. Thus, in this case, there is no bar under the statute for availment of credit, subject to the tax liability being met in full.
- **Petition allowed:** To deny the petitioner the benefit of ITC by thrusting an exemption not claimed by it, upon it, will be contrary to the scheme of the enactment. Therefore, the HC allowed the petition.

Our comments

The ruling is in line with the Supreme Court's (SC) ruling in the case of HCL Ltd., wherein the SC held that there is a choice to the assessee to opt for the one, which gives a greater benefit. A similar ruling was pronounced by the apex court in the case of Share Medical Care, wherein it had held that if the applicant is entitled to benefit under two different notifications or under two different heads, they can claim either of the benefits.

Incentives given to exporters cannot be denied due to changes in law: Madras HC

Summary

The Madras High Court in a recent case has held that the legitimate export incentives given to exporters of goods or services cannot be denied merely because of intervening changes in the law. Further, held that there are no merits in denying the benefit of refund claim filed by the petitioner under the erstwhile indirect tax law and directed the revenue to refund the amount to the petitioner within a period of six weeks.

Facts of the case

- The petitioner[33] had filed three refund claims[34].
- The revenue rejected two refund claims out of the above on the ground that the claimant has not debited the amount that is claimed as refund before or at the time of making the claim in its books of accounts as required.
- Therefore, it filed present writ[35] before the Madras HC on the ground that unutilised ITC was not taken into GST by following the transfer application and therefore the petitioner was entitled to refund claim of the amount even though the petitioner could not debit the duty in the service tax returns in view of the change in the law.

31. Madras HC Order dated 11 March 2021
32. In the case of H.C.L. Limited and Indian Petro Chemicals
33. BNP Paribas Global Securities Operations Pvt. Ltd.
34. Rule 5 of the CENVAT Rules 2004 read with Notification No. 27/2012-CE(NT) dated 18.06.2012
35. WP Nos.34638 & 34641 of 2018 and WMP Nos.40159 & 40160 of 2018

Madras High Court's observations and ruling[36]

- **Refund is legitimate incentive:** The refund of CENVAT credit is a legitimate export incentive given to an exporter of service and goods.
- **Legitimate incentive cannot be denied due to change in law:** Therefore, such legitimate export incentives given to exporters of goods or service cannot be denied merely because of intervening changes in the law i.e. introduction of GST.
- **Reasoning for allowing other claim is applicable to present claims as well:** The reasoning adopted for allowing the other refund claim has to be adopted for these refund claims as well.
- **No carry forward of unutilsed ITC into GST:** Considering the fact that the petitioner has also not been able to utilise the credit of duty under the provisions of GST which came to be effected from 1 July 2017, legitimate export incentives cannot be denied to the petitioner.
- **Petition allowed:** There is no merit in denying the benefit of refund claim filed by the petitioner and the respondent shall therefore refund the amount to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

Our comments

This is an important and welcome judgment by the Madras HC wherein it has observed that legitimate export incentives given to exporters of goods or services cannot be denied merely because of intervening changes in law viz. introduction of GST.

The judgment is likely to set precedence in similar matters and help clear pendency of refund claims for exporters.

36. Madras HC Order dated 29 March 2021

2b Decoding advance rulings

Input tax credit available on expenses incurred for CSR: Uttar Pradesh AAR

Summary

The Uttar Pradesh Authority for Advance Ruling (AAR) in a recent ruling held that any expenses incurred by the applicant in order to comply with the requirements of Corporate Social Responsibility (CSR) are in the course of business. Therefore, it held that ITC shall be available in respect of GST paid on the goods and services procured for the purpose of CSR activities.

Facts of the case

- The applicant[37] is engaged in the business of manufacture and sale of sugar and allied products.
- In order to comply with the CSR[38] obligations, the applicant undertakes a various activities for which it procures various goods and services on which GST is charged by the supplier.
- It sought an advance ruling before the UP AAR to understand whether the expenses incurred for CSR activities qualify as being incurred in the course of business and can it claim ITC in respect of GST paid on the goods and services procured for the purpose of CSR activities.

37. M/s Dwarikesh Sugar Industries Ltd.
38. U/s 135 of the Companies Act, 2013

Uttar Pradesh AAR UP's observations and ruling[39]

- **CSR activities are treated as incurred in the course of business:** Since applicant is compulsorily required to undertake CSR activities in order to run his business, it becomes an essential part of his business process as a whole. Therefore, the said CSR activities are to be treated as incurred 'in the course of business'.
- **Expenses for CSR activities are mandatory:** While gifts are voluntary and occasional, the goods given as a part of CSR activities are mandatory in nature. Thus, if the expenses don't qualify as gift, its credit is not restricted under the GST law[40].
- **No ITC to the extent of capitalisation of building material:** The AAR observed the GST law specifically restricts the ITC on construction/works contract services to the extent of capitalisation. Therefore, it held that the GST paid on goods and services used for construction of school building by the applicant will not be available to the extent of capitalisation in books of account[41].

Our comments

As per the Companies Act, 2013, every registered company that meets the criteria prescribed for CSR is mandatorily required to incur expenses for such activities. Non-compliance of these provisions may lead to business disruptions. Therefore, undertaking CSR activities is an obligation for the companies.

This ruling is in line with the one given by the Mumbai Tribunal in the case of Essel Propack Ltd., wherein the CENVAT credit of taxes paid on CSR expenses was allowed on the ground that CSR is not in the nature of charity as it has got a direct bearing on the manufacturing activity of the company. Further, the Karnataka HC in the case of Millipore India Pvt. Ltd. had held that CSR is a statutory obligation wherein the employer spends money to maintain their factory premises in an eco-friendly manner and certainly the tax paid on such services would form part of the costs of the final products. In those circumstances, the tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof.

Contrary to this, the Kerala AAR in the case of M/s Polycab Wires Pvt. Ltd. had held that electrical items distributed free of cost to flood affected people under CSR shall not be eligible for the purpose of availing ITC.

Even though the advance ruling is applicable only to the applicant, the same acts as a guiding tool for other taxpayers with similar issues.

39. UP AAR Order No. 52 dated 22 January 2020
40. Section 17(5) of the CGST Act, 2017.
41. Section 17(5) (c) and (d) of the CGST Act, 2017

Gift vouchers are instruments of consideration for future supply: Tamil Nadu AAAR

Summary

The Tamil Nadu Appellate Authority for Advance Ruling (AAAR) in a recent case held that vouchers/pre-paid instruments (PPIs) are neither goods nor services but are a means/instrument for payment of consideration. Further it held that the supply associated with the voucher (gold in this case) is classifiable according to the nature of goods or services supplied in exchange for the voucher earlier issued to the customer.

Facts of the case

- The appellant[42] is engaged in the business of manufacturing and trading of jewellery products. As a part of sales promotion, it had introduced a facility of PPIs generally called as gift vouchers/gift cards.
- It had sought an advance ruling before the Tamil Nadu Authority for Advance Ruling (AAR) to understand whether issue of such PPIs to the customers be treated as a supply of goods or service. If yes, what will be the time of supply and rate of tax applicable on supply of such PPIs.
- The AAR had held that such PPIs are supply of goods and the time of supply of such gift vouchers/cards shall be the date of issue if the vouchers are specific to any particular goods specified against the voucher. If redeemable against any goods, the time of supply shall be the date of redemption[43]. It further held that paper based gift vouchers shall be taxable @ 12% or 18% as per the classification.
- Aggrieved by the above ruling, the appellant filed the present appeal before the Tamil Nadu AAAR.

Tamil Nadu AAAR's observations and ruling[44]

- **Vouchers are neither goods nor services but instruments of consideration:** Vouchers issued by the appellant are of the nature of actionable claims. Vouchers are neither goods nor services[45] but instruments of consideration for future supply and therefore supply of vouchers per se is not taxable.
- **Vouchers are a means for advance payment:** A voucher is a means for advance payment of consideration for future supply of goods or services.
- **Determination of time of supply:** The gold voucher in the present case representing the underlying future supply of gold jewellery would be taxable at the time of issue of the voucher.
- **No double taxation:** The transfer of gold subsequently will not be subject to tax at the time of redeeming the voucher for gold, as the supply is deemed to have been done at the time of issue of voucher itself[46].
- **Voucher cannot be classified separately:** Since voucher is only an instrument of consideration and not goods or services, the same is not classifiable separately. Only the supply associated with the voucher is classifiable according to the nature of the goods or services supplied in exchange of the voucher earlier issued to the customer.

Our comments

The taxability of gift vouchers has always been a matter of litigation under the GST and the pre-GST era.

Under the pre-GST era, the apex court in the case of Sodexo had held that such food vouchers are only payment instruments and not goods and they become taxable only when they are redeemed.

The present ruling by Tamil Nadu AAAR also rightly observes that what is taxable is the underlying supply of goods or services against the vouchers and not the vouchers per se.

This is a welcome ruling by the Tamil Nadu AAAR and shall help in providing required clarity on the taxability of vouchers.

42. M/s Kalyan Jewellers India Limited
43. Tamil Nadu AAR Order No. 52/ARA/2019 dated 25 November 2019
44. A.R.Appeal no.01/2020/AAAR dated 30 March 2021
45. Entry No. 6 of Schedule III to the CGST Act, 2017
46. Section 12(4) of the CGST Act, 2017

Supply of pre designed software is supply of goods: Karnataka AAR

Summary

The Karnataka Authority for Advance Ruling (AAR) in a recent ruling held that the pre-developed or pre-designed software supplied by the applicant is covered under the definition of goods. The software supplied can't be used without the aid of the computer and has to be loaded on a computer and then after activation would become usable. Hence it satisfies all the conditions that are required to be satisfied to cover them under the definition of goods.

Facts of the case

- The applicant[47] is an authorised reseller for various IBM SPSS Software in India. The applicant is a pure trader and does not develop/modify any software prior to selling it to the customers.
- It sought an advance ruling before the Karnataka AAR to understand whether the supply of licences for internet downloaded software to public funded scientific and research institutions is leviable to reduced rate of GST[48].

Karnataka AAR's observations and ruling[49]

- **Pre-developed software satisfies all conditions of goods:** The software supplied by the applicant is a pre-developed or pre-designed software and made available through the use of encryption keys. Hence it satisfies all the conditions that are required to be satisfied to cover them under the definition of 'goods'[50].
- **Goods supplied are computer software:** Further the goods, which are supplied by the applicant can't be used without the aid of the computer and has to be loaded on a computer and then after activation would become usable. Hence such goods supplied is computer software and more specifically covered under application software.
- **Supply of pre-developed software is supply of goods:** The services of limited end-user licence as part of packaged software are excluded from the entry[51] that covers licencing services for the right to use computer software and databases[52]. Hence the supply made by the applicant is supply of goods[53].
- **Leviable to reduced GST rate:** In the instant case the applicant is supplying computer software to National Institute of Science Education and Research, Bhubaneswar, a public funded research institution, under the administrative control of Department of Atomic Energy (DAE), Government of India. Therefore, the supply is eligible for reduced rate of GST.

Our comments

The classification of software has always been a matter of extensive litigation. Under the erstwhile regime, the apex court in the case of Tata Consultancy Services Ltd. had held that software is goods.

The GST regime to a large extent has clarified the position. It is imperative to determine whether there is the sale of goods or transfer of right to use. Sale of off-the-shelf software without any restriction be regarded as goods, wherein when transferred as the right to use then the same shall be classified as services.

47. SPSS South Asia Pvt. Ltd.
48. Notification No. 45/2017-Central Tax (Rate) dated 14 November 2017 and Notification No. 47/2017-Integrated Tax (Rate) dated 14 November 2017
49. KAR ADRG 15/2021 dated 24 March 2021
50. Section 2(52) of the CGST Act, 2017
51. SAC 997331
52. Explanatory Notes to the Scheme of Classification of Services
53. covered under tariff heading 8523

2c Key National Anti-profiteering Authority orders

Profiteering upheld against cinema hall due to non-reduction in movie ticket prices: NAA

Summary

The National Anti-profiteering Authority (NAA) has upheld profiteering in the case of a cinema hall on the ground that the respondent had increased the base prices of admission tickets to maintain the movie ticket prices unchanged and thus not passed on the benefit of reduction in GST rate from 28% to 18% on movie ticket price.

Facts of the case

- An application was filed alleging profiteering in respect of service by way of admission to exhibition of cinematograph films supplied by the respondent[54]. It was alleged that the respondent had increased the base prices of admission tickets to maintain same prices even after reduction in GST rate from 28% to 18% on movie ticket price above INR 100. Thus, it had not passed on the benefit of reduction in GST rate by way of not making a commensurate reduction in movie ticket price[55].
- The case was further referred to the Directorate General of Anti-Profiteering (DGAP). The DGAP observed that the respondent had realised excess prices from the customers and confirmed profiteering to the tune of INR 30.13 lakh.

54. M/s Prasad Media Corporation Pvt. Ltd.)
55. In terms of Section 171 of the CGST Act, 2017

NAA's observations and ruling[56]

- **Realisation of excess amount:** The NAA observed that the Respondent had realised excess amount from the customers. Therefore, the cum-tax price paid by the consumers was not reduced commensurately despite reduction in GST rate. Such excess amount realised has already been included in the profiteering amount as worked out by the DGAP in previous investigation.
- **Delhi High Court order:** The NAA took note of the Delhi HC order wherein the HC had directed the Respondent to deposit the principal profiteered amount in six instalments. Further, the HC had stayed the interest and penalty directed to be paid.
- **Anti-profiteering upheld:** Therefore, the NAA accepted the report of DGAP and upheld the order passed previously whereby the respondent was found to have profiteered. The NAA upheld the profiteering to the extent of INR 30.13 lakh.

Our comments

The GST law does not prescribe a mechanism/methodology to determine the quantum of benefit to be passed on. Non-availability of the prescribed mechanism is one of the major reasons for non-compliance with anti-profiteering provisions and more businesses are coming under the NAA's scanner.

Various writ petitions have already been filed in high courts against the orders pronounced by the NAA. The major ground for the challenge being the absence of a proper mechanism/methodology to be used to determine the quantum of benefit to be passed on to the consumers due to a reduction in the GST rate or due to the availability of additional input tax credits. Currently, all these matters are pending with the Delhi High Court and the verdict of the HC in this regard is still awaited.

56. NAA Order No. 78/2020 dated 27 November 2020

03 Expert column

Cryptocurrency: GST considerations

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The exchange of goods and services started with the barter system in the earliest years of human civilisation and then moved to currencies in some form or other. The currencies have undergone tremendous transformation over the centuries, from stone to metal to paper to paperless. Modern economies are normally based on fiat currency i.e. legal tender designated and issued by a central authority, such as the Indian rupee, US dollar, etc.

The ever-evolving technology has brought a new kind of currency into existence which is known as virtual currency also referred to as cryptocurrency and assets such as bitcoin and litecoin. [Will be referred to as cryptocurrencies in the article]

A universal definition of cryptocurrency is yet to emerge. Different regulators, governments, etc., in different jurisdictions, have ascribed different definitions to virtual currency. The Reserve Bank of India (RBI) in its Financial Stability Report of June 2013 defined virtual currency as a type of unregulated digital money, issued and controlled by its developers and used and accepted by the members of a specific virtual community.

The Financial Action Task Force in its Virtual Currencies – Key Definitions and Potential AML/CFT Risks report of June, 2014 has defined virtual currency as a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status (i.e., when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction. It is neither issued nor guaranteed by any jurisdiction and fulfils the above functions only by agreement within the community of users of the virtual currency.

The government and regulators in various jurisdictions are apprehensive of its impact on the existing monetary system and monetary policy management. However, the cryptocurrency ecosystem continues to evolve and it is increasingly getting popular in many countries. While Japan has adopted a liberal approach towards cryptocurrencies, in the USA, it is highly regulated and countries like China, Vietnam, etc. have imposed a complete ban on cryptocurrency. However, in India, it is still unregulated.

Like many other countries, in India also the cryptocurrencies are gaining popularity. A few cryptocurrency exchanges (CCEs) and intermediaries started operating in India and trading in cryptocurrencies. They were being undertaken but not in very significant volumes. Since in India, there is no regulation relating to cryptocurrencies and the RBI was apprehensive of its impact on existing payment and settlement system, monetary policy, etc. and thus, since 2013, the RBI started, cautioning the users, holders and traders about the potential financial, operational, legal and consumer protection and security related risks associated with cryptocurrencies. The RBI released a statement dated 5 April 2018 and followed it by Circular dated 6 April 2018, whereby it directed that entities regulated by it (like Banks, NBFCs, etc.), with immediate effect, shall not deal with or provide services to any individual or business entities dealing with or settling virtual currencies. The regulated entities, which already provide such services shall exit the relationship within three months. This was a virtual ban on cryptocurrencies since presently, at some point in time, the cryptocurrencies are converted into fiat currency using the banking network and also the VCEs require banking networks to collect their revenue. However, peer-to-peer trading of cryptocurrency continued.

The said circular dated 6 April 2018 was challenged before the Supreme Court, which by its verdict dated 4 March 2020[57] was quashed. Further, while answering various questions relating to cryptocurrencies in both the houses of Parliament, the Ministry of Finance has stated that the matter is under discussion and a decision will be taken based on the recommendation of the Inter-Ministerial Committee formed in this regard. It is expected that a bill to regulate cryptocurrencies in the country is likely to be tabled in Parliament. While the government will take a call whether to ban cryptocurrencies in India, it is important to note that in March 2021, the Ministry of Corporate Affairs (MCA) has mandated disclosure of cryptocurrency transactions and investments by companies in their books. Further, the Central Economic Intelligence Bureau (CEIB), an intelligence agency established by the Department of Revenue, has put forward a proposal to impose an 18% GST on bitcoin transactions. Also, the CEIB has suggested to the finance ministry that bitcoin might be categorised under the intangible assets class and GST could be imposed on all transactions. This indicates that cryptocurrencies are here to stay. In that case, it will be critically important for the regulators and legislatures to provide clarity on the taxation of transactions of and relating to cryptocurrencies. Herein below we shall discuss some of the issues from the GST perspective.

The CEIB has recommended treating cryptocurrencies as intangible goods and has proposed GST at 18% on all cryptocurrency transactions. If this recommendation is to be accepted, it will be of utmost importance to define cryptocurrency in such a way that it covers all the variants of cryptocurrency. Further, various stages and transaction need to be evaluated and clear the GST implication on all such stages and transactions should be covered. Some of them are as below:

57. Internet and Mobile Association of India vs Reserve Bank of India

Services concerning the verification of cryptocurrency transactions (mining)

In order for a cryptocurrency transaction to take place, a verification process is needed, which is called mining. A request for the transfer of cryptocurrencies from one user to another should be verified by miners. Miners work voluntarily and they are rewarded with new cryptocurrencies by the system for each transaction validated. Also, cryptocurrency users can offer a transaction fee to miners to avoid delays in the verification process.

A cryptocurrency transaction may be verified even in the absence of a transaction fee, if the users are willing to wait for several days or weeks.

Here, a question would arise how the cryptocurrency generated by the system upon 'mining' would be treated under GST. Possibly the same may be treated as a self-generated Capital Asset (intangible). At the time of generation, it may not attract the GST. However, at the time of selling/exchange, the same needs to be valued and the GST need to be levied. Here, valuation rules need to be clearly specified for the valuation of such capital assets. On the other hand, transaction fees or rewards received by the miners from mining activities may be seen as consideration towards the supply of services and the GST may be collected from the miners on such mining activities.

Services concerning the arrangement of transactions in cryptocurrency (digital wallets)

Digital wallets are software platforms (e.g. applications on smartphones) that allow cryptocurrency holders to hold their cryptocurrency, keep a record of their balance and send or receive cryptocurrencies. Digital wallet services may charge fees for the provision of such services.

The provision of digital wallet services by the wallet service provider for consideration may constitute the supply of services. Thus, digital service providers may be required to be registered under GST and charge GST on services provided in relation to storing keys in wallets.

Services related to intermediation supplied by exchange platforms

The exchange platforms act as intermediaries to enable buyers and sellers of cryptocurrencies to transact with each other in a virtual marketplace, sometimes in exchange for a fee to use the platform.

The services provided by cryptocurrency exchanges in relation to the use of platform or commission/transaction charges charged may be considered as supply of services. The consideration for these services may be received in fiat currency (ie INR, USD, etc.) or may be in cryptocurrency. The GST implication would be simpler where the consideration is received in fiat currency. However, where the consideration is received in cryptocurrency, the GST Act/Rules needs to address issues like: i) Valuation of services (ii) Conversion of cryptocurrency to INR for levying GST (iii) Exchange rate, etc.

Use of cryptocurrencies for acquiring goods or services

Cryptocurrencies can be used for buying and selling goods and services. As per the proposal of CEIB, cryptocurrencies are proposed to be treated as an intangible asset. In such a case, payment in cryptocurrency against goods or services will be regarded as a barter transaction and applicable GST will be payable on each transaction. In this regard, again the valuation would be an issue that the GST law needs to address. The value of goods and/or services supplied may be denominated in INR/USD or any other fiat currency whereas the cryptocurrencies have their own unit of measure. Thus, clear rules need to be provided for valuing such barter transactions. Also, the rate of GST would be an aspect which needs to be clarified. Cryptocurrencies are proposed to be taxed at 18% whereas the rate of GST for goods and/or services may vary. The GST law needs to specify which rate should be adopted where the rate of GST for cryptocurrency and the goods and/or services supplied are different.

Besides the CEIB proposal, there can be another view where cryptocurrency is recognised a currency by the RBI. In such a case, wherever any payment for supply of goods and service is made using the cryptocurrency, the same shall not be barter and the GST shall be levied on the value of goods where the value can be derived using a specified exchange value to convert the cryptocurrency value to INR just like any transaction in presently being done using forex.

These are few examples of aspects that need to be considered from an indirect tax perspective. The cryptocurrency and the related technology are at a nascent stage and are evolving. There will be various aspects that will pose challenging questions from a taxation perspective. However, currently, cryptocurrency is not regulated in India and we need to wait for the government to come up with the legislative framework, including tax laws, on the subject matter. In the interim, the entities, which are undertaking cryptocurrency activities need to ensure that they maintain proper records of such transactions and adopt uniform tax positions.

Disclaimer

It is highlighted that the article is informative in nature and does not constitute any kind of legal advice. Therefore, it is very important for the readers to do their own research and get independent professional advice based on their specific circumstances prior to any decision.

04 Issues on your mind

What is Form GSTR-5 under GST?

All the registered non-resident taxable persons are required to file a return in Form GSTR-5 for the period during which such person conducts business transactions in India. Form GSTR-5 is required to be filed within a week after the expiry of their GST registration (if the return is filed for a period of fewer than 30 days) or on monthly basis before every 20th of the succeeding month, if their registration extends for several months.

What is HSN Code and how to report 4-digit/6-digit HSN codes in invoice?

HSN code stands for Harmonised System of Nomenclature. It helps to do away with the need to upload the detailed description of the goods which saves time and makes filing easier. Effective from 1 April 2021, 4-digit/6-digit HSN code reporting has been made mandatory in Form GSTR-1 in Table no. 12 based on the aggregate turnover[58].

To search a HSN code, the taxpayers need to go log on to the GST portal and navigate to **Services > User Services > HSN Code**. Under 'Search HSN' by name or code filed, enter the first three digits of the code of the goods/services to be searched. After that the taxpayers need to select goods or services from the list displayed and then click on the search button. The search results are displayed under Chapter Head, HSN Code and Related HSN Codes section. The related HSN Codes section displays all the related codes available in 4, 6 or 8 digits. The taxpayers can click the HSN code hyperlink to view further details.

Further to know more about the functionality, the tax payers can log on to **https://services.gst.gov.in/services/searchhsnsac.**

58. Notification No. 78/2020 – Central Tax, dated October 15, 2020

05 Important developments in direct taxes

CBDT lays down composition of Approving Panel (AP) for General Anti-Avoidance Rules (GAAR)

As per GAAR provisions, reference is required to be made to the AP in certain cases. The CBDT has now laid down[59] that the AP would be constituted as follows:

- Chairman - a person who has been a judge of a high court
- Members - (a) Member of IRS[60] (b) An academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices
- Secretariat will also be set up for providing secretarial assistance to the AP

CBDT defers tax audit reporting on GAAR and Goods and Services Tax (GST) till 31 March 2022.

In view of the prevailing situation due to COVID-19 pandemic, the CBDT[61] has decided that reporting in the Tax Audit Report , relating to GAAR[62] and GST[63] will be kept in abeyance till 31st March, 2022.

59. F.No. 226/29/2019/ITA-II dated 7 April 2021
60. Indian Revenue Services, [not below the rank of Principal Chief Commissioner or Chief Commissioner of Income tax]
61. Circular No. 05/2021 dated 25 March 2021
62. Clause 30C - GAAR: Impermissible avoidance arrangement, if any, entered into by the taxpayer
63. Clause 44 - GST: Break-up of expenditure of entities registered or not registered under GST

Clarification regarding Faceless Appeals Scheme, 2020

The CBDT has clarified[64] that the Faceless Appeals Scheme, 2020 will apply only to proceedings relating to Income Tax Act, 1961. Accordingly, it will not apply in case of proceedings relating to Wealth tax Act, 1957, Interest tax Act, 1974, Gift tax Act, 1958, Expenditure tax Act, 1987, Securities Transaction Tax, Commodities Transaction Tax and Equalisation levy.

Finance Act, 2021 enacted on 28 March 2021

Some of the key amendments in the Finance Act, 2021 are as follows:

- **Equalisation levy (EL) -** EL will not be levied in respect of goods and services owned and provided by a person resident in India or by a permanent establishment of a non-resident in India, transacted over an overseas ecommerce platform
- **Slump sale -** Fair market value (FMV) of the capital assets as on the date of transfer, calculated in the manner to be prescribed, will be treated as full value of consideration received or accrued as a result of transfer of such capital asset
- **Depreciation on goodwill -** Computation mechanism for working out Written Down Value (WDV), of a block which previously included goodwill, has been provided
- **Minimum Alternate Tax (MAT) -** The Finance Bill, 2021 proposed to adjust the earlier years' book profits for the purpose of MAT computation for secondary adjustment(s) or advance pricing agreement (APA) by making an application to the tax officer, who was then required to dispose of it within four years from the end of the year in which the application is received. The benefit of this provision has now been restricted to a tax payer who has not utilised the MAT credit in any subsequent assessment year.

64. F.No. 279/Misc.IM-44/2018-IT dated 7 April 2021

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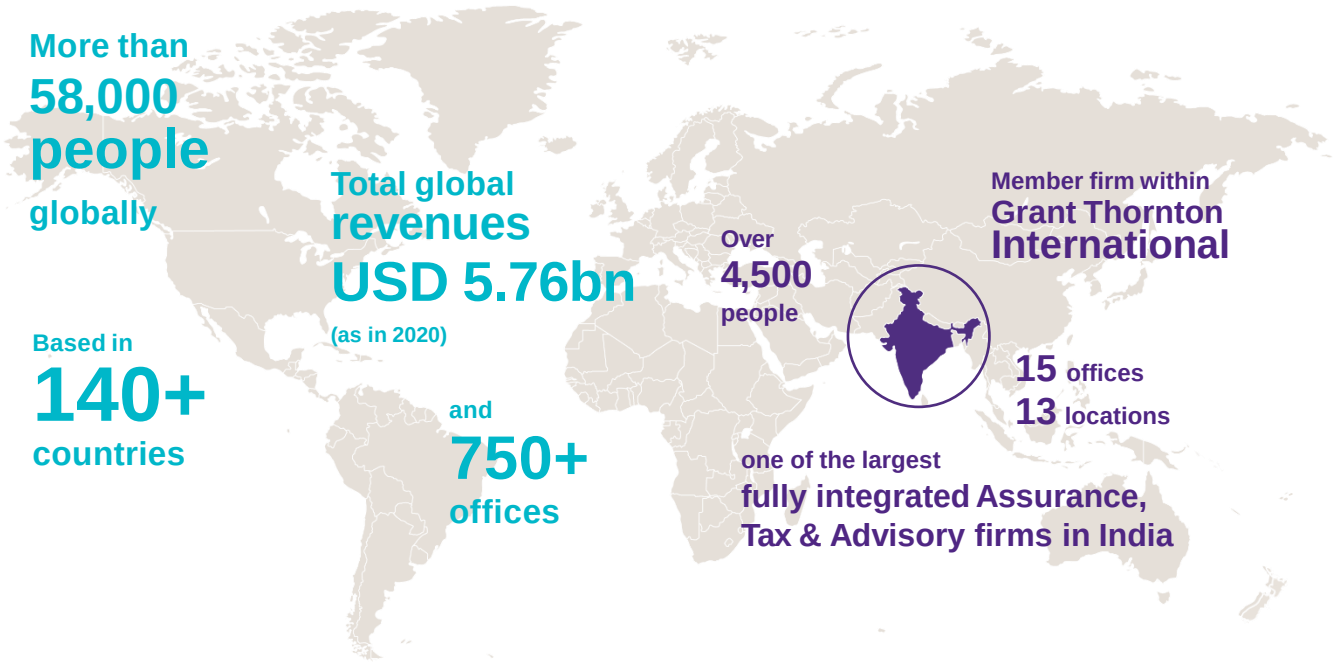

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