CASC BULLETIN

THE CHARTERED ACCOUNTANTS STUDY CIRCLE

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MEETINGS

Date	Time	Speaker	Topic
14.03.2020 Saturday	09.00 am*	CA Chinnasamy Ganesan	CARO 2020 - An Analysis
19.03.2020 Thursday	06.30 pm**	CA Shankara Narayanan	GST New Monthly Return Forms 2.0 - An Analysis

*Preceded with Breakfast half an hour before the scheduled time of meeting
** Preceded with High Tea half an hour before the scheduled time of meeting

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EDITORIAL

Dear Colleagues in Profession,

"Change is constant. Change is inevitable. Growth is optional."

Is not knowledge-updating a basic requirement in this present fast changing world? Learning new things, acquiring new information, acquiring new knowledge, learning new facts, acquiring new skills, developing new skills, mastering new skills, ……. Obviously, if we are not updated then will we not become outdated, antiquated, archaic, obsolete, …….

Constantly working on our knowledge may be challenging and not comfortable at all, but once it becomes a habit, our career will start growing tremendously, giving us the results we could not even have dreamt about before!

As professionals, don't we require a certain amount of professional development every year to retain our status and be relevant? Whether there is a requirement or not, don't we need to make sure that we are up-to-date with what's happening in our field, or else will we not lose credibility and will we not potentially expose ourselves to risks?

If we do not move forward, we are not merely standing still, we are moving backward, eventually we will be left behind. The race is a merciless one, and no one stops to help those who make slow progress and fall behind others.

If we want to keep up-to-date with what's happening around us in the world, ***we need to consciously take time off,*** to refresh and update our skills.

We can keep ourselves updated by reading professional journals, attending professional events, conferences, workshops or our own research. The rise of webinars, e-newsletters and online forums means it's easier than ever to participate in learning from our office desk or at home.

Enthusiastic young and dynamic professionals take time off, put in sincere efforts to write articles in magazines and bulletins thereby updating and sharing invaluable knowledge with fellow professionals. These donors of knowledge are in true sense, personification of Goddess Saraswathi! We fold our hands in reverence to their yeomen service.

And now what about the Donees? Knowledge is laid at your doorstep. Acknowledge, Accept, Consume, Digest, Evaluate and Succeed.

From time to time, we at CASC have been making sincere efforts in knocking at your door with Speaker meetings, alerts, updates, researched concepts, judicial decisions,…….

At CASC, in the month of March, we have lined up for you Bank Audit Seminars, discussions on the notified CARO 2020 effective from FY 2019-20 onwards and discussions on Multi-Lateral Instruments (MLIs) effective from 1st April 2020. A series of articles on these topics have been and will be in future be published in the CASC Bulletin.

Now please open the doors, welcome knowledge and move in tandem towards enriching yourself and the country.

Best Regards

P.Ramasamy

Sri CA Dungar Chand Jain
Chairman, SIRC of ICAI (2020)

"Congratulations! Your well deserved elevation to higher office has come with a lot of emotions, considering your legacy of hard-work, dedication, diligence and proficiency to work."

You have made Us proud - CASC

ALERT - 1

Multi-Lateral Instrument (MLIs) *will enter into force and its provisions will have effect on India's tax treaties w.e.f.* ***01.04.2020*** *i.e., from FY 2020-21 onwards.*

MLI is an agreement put out by OECD to stop Base Erosion and Profit Shifting (BEPS), a practice referring to tax avoidance strategies that exploit gaps and mismatches in tax rules.

The treaties which stand modified to incorporate treaty related BEPS measures through MLI are called "Covered Tax Agreements" ('CTA'). Once MLI is effective, the treaty will need to be read along with the provisions as opted under MLI by contracting countries.

ALERT - 2

MCA in place of the existing ***The Companies (Auditor's Report) Order, 2016,*** *has notified* ***CARO 2020*** *after consultation with the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013.*

Every report made by the auditor under section 143 of the Companies Act on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after the 1st April, 2019, shall contain report on matters specified in paragraphs 3 and 4 of ***the CARO 2020.***

A DISCUSSION PAPER ON CHAPTER III - DIRECT TAXES OF FINANCE BILL, 2020- FEBRUARY 2020

CA. VIVEK RAJAN V

Introduction - ***Thanking everyone for our Discussion Papers of 2016, 2017, 2018 & 2019(Interim and Final)***

The Finance Bill, 2020 (Bill No. 26 of 2020) was presented in Lok Sabha on 01st February 2020 by Ms. Nirmala Sitharaman, Union Finance Minister. In Chapter III of Finance Bill, 2020, there has been 104 amendments to the Income-tax Act, 1961.

Scope of the Discussion Paper

This discussion paper attempts to **cover all sections of the Finance Bill, 2020** relating only to Direct Taxation. This discussion paper attempts to cover all the aspects about the amendments broadly and **not in detail.** Further unless otherwise specifically mentioned, sections discussed in this paper, relates to Income-tax Act, 1961 and the Finance Bill, 2020. Please refer to Finance Bill, 2020 and the relevant pronouncements before taking any decision. The readers are requested to contact the author, in case of errors (which are unintentional) and also in case of divergent views with the author's note

We thank the readers for giving their support for the 100% coverage attempted for the first time for the Budget 2019. Similarly, we are attempting to extend the coverage of the discussion paper **to all the sections of the Finance Bill.** Giving due consideration to the volume of the discussion paper and the challenges involved in publishing, we intend to present this in a phased manner (March 2020 and April 2020). ***The sections which are not covered in this month's bulletin, would be covered in the subsequent months.*** We sincerely hope that this effort is of value addition to the readers.

Acronym and Description

FA	Finance Act
CG	Capital Gains
IFHP	Income from House Property
LTCG	Long Term Capital Gain
The Act	Income Tax Act, 1961
PY	Previous Year
AY	Assessment Year
PCIT	Principal Commissioner of Income-tax
CIT	Commissioner of Income-tax

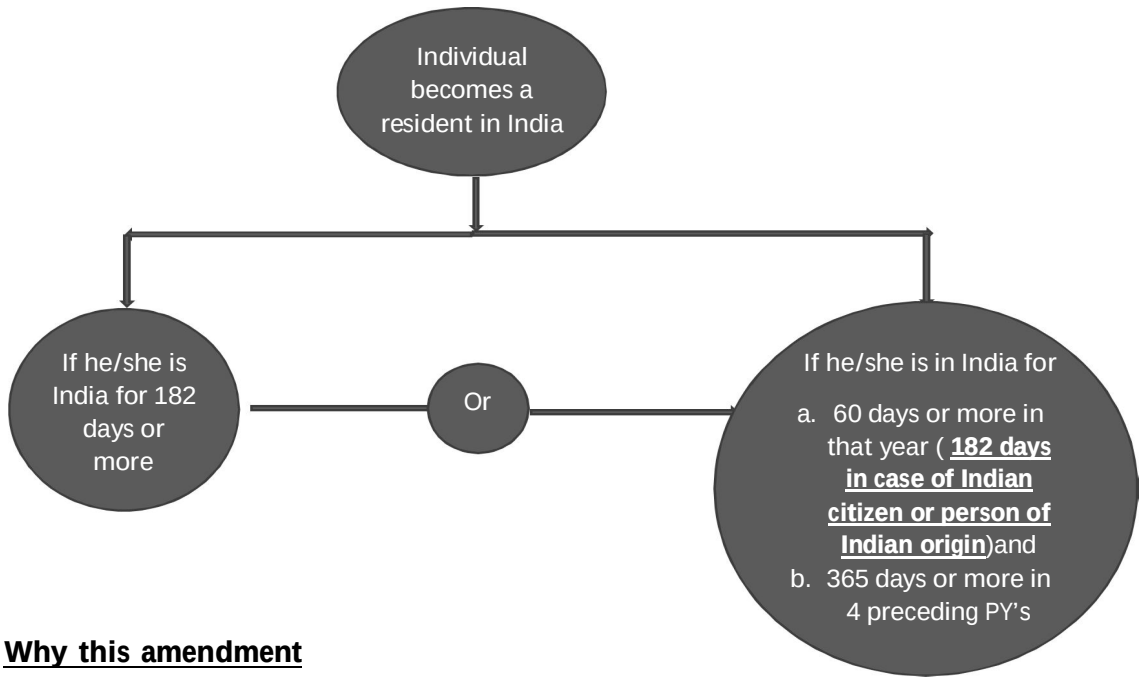
NRI	Non- resident Indian
RBI	Reserve Bank of India
NCLT	National Company Law Tribunal
FMV	Fair Market Value
TDS	Tax Deducted at Source
TCS	Tax Collected at Source

1. Prevention of Tax Abuse- Modification of residency provisions – Amendment of Section 6

With effect from 01st April 2021 and applies from AY 2021-22 and subsequent AY's

Individual becomes a resident in India

Present scenario- Amendment relating to "Resident"



Why this amendment

1. The relaxation given to Indian citizen or person of Indian origin was for allowing them to visit India for longer duration without becoming resident of India.

2. There have been instances where this relaxation of stay of 182 days has been misused in such a way that though their global income ought to have been taxed in India , by managing their period of stay in India , they remain non-resident in perpetuity, thereby not declaring their global income to tax in India.

3. The issue of stateless persons has been difficult to handle at the global stage. It is entirely possible for an individual to arrange his affairs in such a fashion that he is not liable to tax in any country or jurisdiction during a year.

4. This arrangement is typically employed by high net worth individuals to avoid paying taxes to any country / jurisdiction on income they earn. Tax laws should not encourage a situation where a person is not liable to tax in any country. The current rules governing tax residence make it possible for individuals including high net worth individuals, who may be Indian citizen to not to be liable for tax anywhere in the world. Such a circumstance is certainly not desirable; particularly in the light of current development in the global tax environment where avenues for double non-taxation are being systematically closed.

Amendment

1. The relaxation is reduced from 182 days to 120 days.

2. An Indian citizen who is not liable to tax in any other country or territory, **shall be deemed to be resident in India.**

Author's note

1. To be categorized as a non-resident, an Indian (citizen or of Indian origin) has to stay abroad for minimum of 245 days a year (183 days prior to amendment).

2. If a non-resident Indian, by virtue of tax incidence is not taxed in any country, then that global income would be taxed in India.

FAQ's

1. **What would be my residential status if I being a person of Indian origin stay in abroad for 246 days for FY 2020-21 and stay for less than 365 days in 4 preceding PY's?**

   You would be a Non-resident Indian for FY 2020-21.

2. **I am NRI working for a company in UAE and am not liable to tax in UAE due to the exemption conferred by the taxation law of UAE. In light of the budget proposal, would my global income be taxed in India?**

   No. Your global income will not be taxable in India. The legislative intent in introducing such provision is to curb tax evasion by certain people who by managing their period of stay in a year avoid payment of tax in any country.

   The legislative intent is not to disturb the exemptions conferred by the taxation laws of certain countries.

The CBDT vide press release dated 02nd February 2020 clarified

a. that the new provision is not intended to include in tax net those Indian citizens who are bonafide workers in other countries.

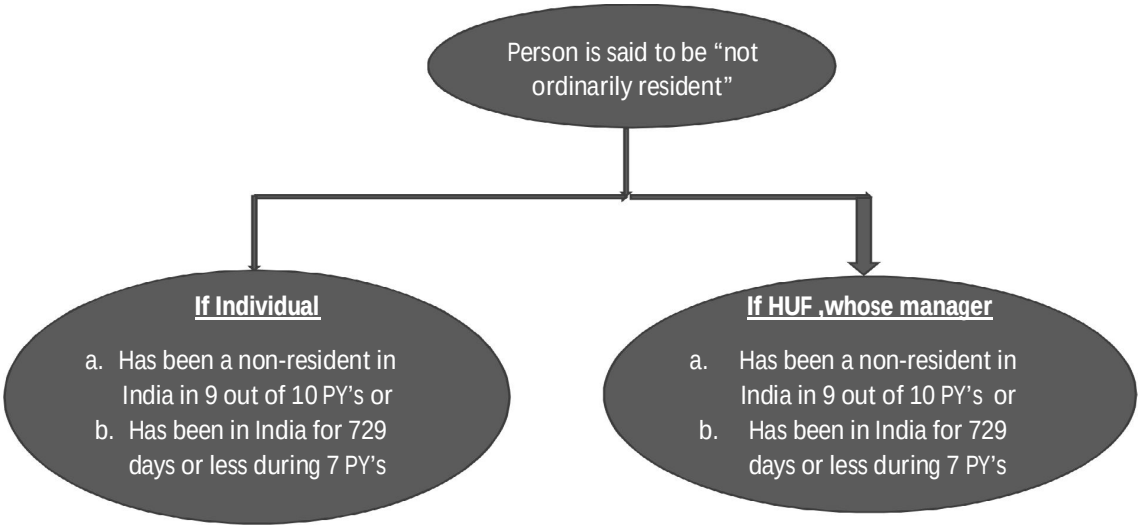
b. that in some section of the media the new provision is being interpreted to create an impression that those Indians who are bonafide workers in other countries, including in Middle East, and who are not liable to tax in these countries will be taxed in India on the income that they have earned there. This interpretation is not correct.

c. In order to avoid any misinterpretation, it is clarified that in case of an Indian citizen who becomes deemed resident of India under this proposed provision, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession. Necessary clarification, if required, shall be incorporated in the relevant provision of the law.

3. **I am an NRI having an employment contract with a company in United Kingdom. I am being deputed for work in UAE and I work in UAE for 240 days in a year. My salary account is maintained in United Kingdom and the currency in which the salary is given is Dirham. In light of the budget proposal, would my global income be taxed in India?**

Since your employer is not based in UAE but based out of United Kingdom, you would have to resort to the provisions of DTAA of Indian Income-tax Act, 1961 and the taxation laws of United Kingdom and claim relief based on whichever is beneficial to you.

Present scenario- Amendment relating to "Not ordinarily resident"

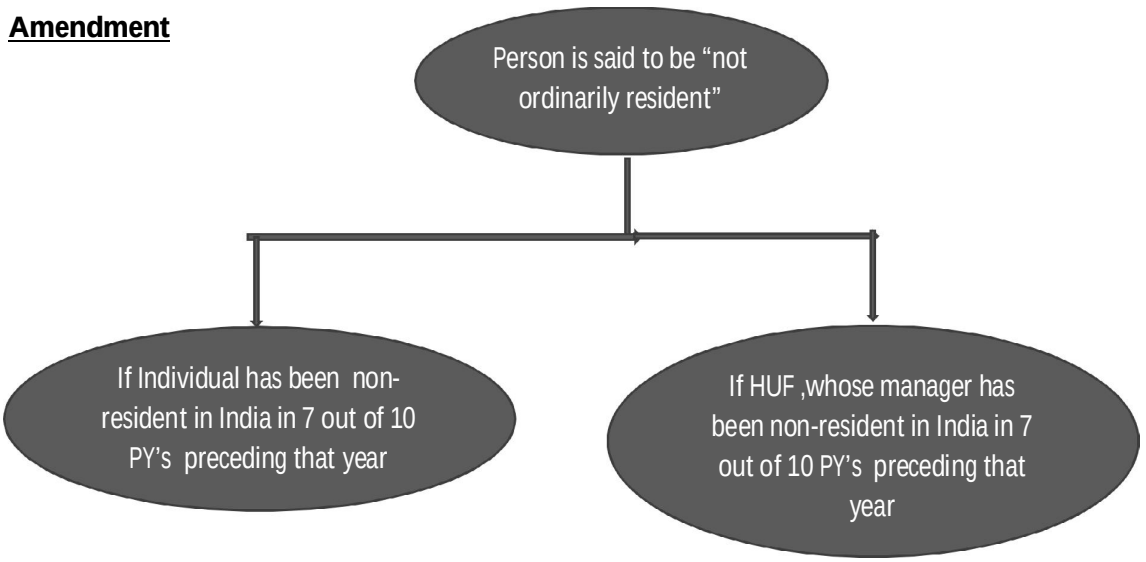


Why this amendment

The above provisions have been in the Act to ensure that a non-resident is not suddenly faced with the compliance requirement of a resident, merely because he / she spends more than specified number of days India during a particular year. These special relaxations have been a subject matter of disputes and amendments.

Due to the above proposed amendment of reduction in the number of days for an Indian citizen or person of Indian origin from 184 days to 120 days, a consequential amendment would also be required in order to further enhance the relaxation.

Amendment



2. Amended definition of "Work" in Section 194C-

With effect 01st April 2020 and will apply from AY 2021-22 and subsequent AY's

Present scenario

The word "Work" under section 194C includes "manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer"

As can be inferred from above, TDS u/s 194C does not arise in case where the "Work" is executed by getting the contract manufacturer to procure the raw materials supplied through the related entities of the assessee

Why this amendment

Some assessee's were using this to eliminate the necessity for deduction of tax at source by getting the materials supplied through related entities. As a result, these payments does not come under the ever widening of TDS.

Amendment

The definition of the term "Work" has been amended, to include the contract manufacturing wherein the raw material supplied by the assessee or its associate. Associate is proposed to be defined to mean a person who is placed similarly in relation to the customer as is the person placed in relation to the assessee under the provisions contained Section 40A(2)(b)

Author's note

The exemption from Section 194C in a scenario where the raw material is supplied by a third party continues to remain.

The reason given by the explanatory memorandum that substantial amount of income escapes the tax net is surprising because in the past few years, the law has been so much tightened that it is very difficult for a business assessee to escape the tax net. The amendment is more intended to bring more money to the exchequer.

3. Penalty for false entry in books of accounts- Insertion of Section 271AAD- ***Enhanced professional responsibility***

With effect 01st April 2020 and will apply from AY 2021-22 and subsequent AY's

Present scenario and reference to Explanatory Memorandum

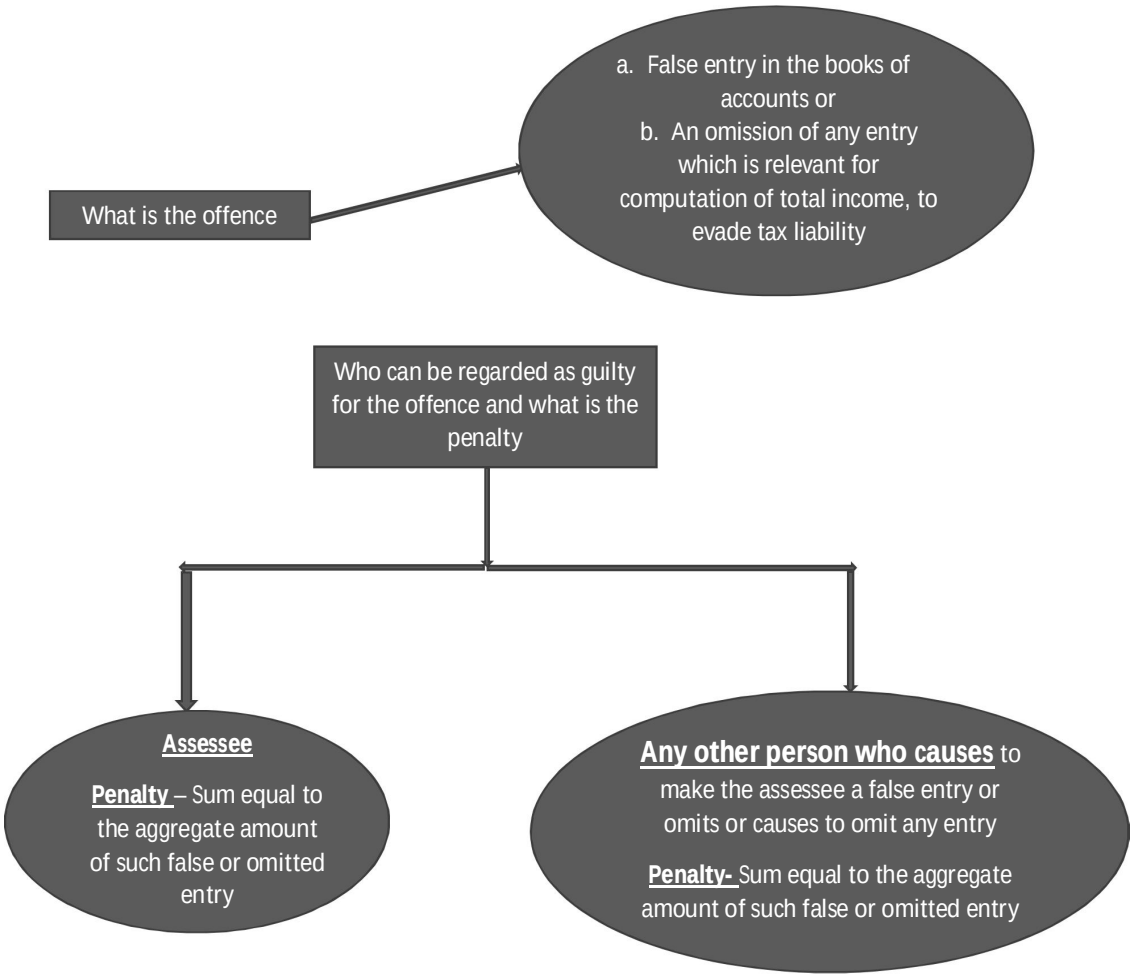
a. Consequent to the advent of GST, several cases of fraudulent input tax credit (ITC) claims have been unearthed by the authorities.

b. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices were found to be issued by racketeers who do not actually carry on any business or profession and the invoices were issued without actual supply of goods or services.

c. The GST on the invoices has neither been paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.

d. In the FY 2018-19, the central GST authorities registered over 1600 cases involving amount of exceeding Rs. 11,000 Crores.

Amendment



"False entry" includes **use or intention to use**

a. forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence

or

b. invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both

or

c. invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist

Author's note

a. For instance, if the value of false entry is Rs. 1 Crore, then the penalty also would be Rs. 1 Crore. This is a very huge step and the same demands greater minute attention for details from the professionals who are either involved in the attestation services or the advisory services.

b. Further there is a likelihood of initiation of prosecution proceedings u/s 276C, consequent to completion of penalty proceedings or even during the pendency of the penalty proceedings.

c. In certain cases, if penal/ prosecution proceedings are initiated under both the Income-tax Act, 1961 and the GST Act, 2017, for the same offence, it would tantamount to punishing twice for the same offence which might be contradictive with the Article 20(2) of The Constitution of India.

1. Insertion of Taxpayer's Charter – Insertion of Section 119A- ***India joins the league of countries like Australia, The USA, Canada and Republic of Malta***

With effect 01st April 2020 and will apply from AY 2021-22 and subsequent AY's

Reference to Explanatory Memorandum and Finance Minister's Budget speech

To empower the CBDT to adopt and declare a Taxpayer's Charter and issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for the administration of Charter.

The Finance Minister in her budget speech explained that an important aspect of both ease of living and ease of doing business is fairness and efficiency of tax administration and to achieve this a Taxpayer's charter is also essential.

Amendment

Section 119A- Taxpayer's Charter

"The Board shall adopt and declare a Taxpayer's Charter and issue such orders, instructions, directions or guidelines to other income-tax authorities as it may deem fit for the administration of such Charter".

Author's note

This is a welcome step and it is a sincere hope that the Taxpayer's Charter gets implemented in the true spirit and the impact of it percolates to all levels and applies at all times and circumstances.

(The author is a Chennai based Chartered Accountant in Practice. He can be reached at vvr@vvrcas.com)

INDIA BUDGET 2020-2021 - INDIRECT TAX PROPOSALS

CA. DEBASIS NAYAK

With the backdrop that our Government shall work towards taking the country forward, the Hon'ble Finance Minister has tabled the second budget of the Government for FY 2020-2021 on 1st Febuary 2020. This budget is woven around three prominnet themes as Aspirational India, Economic development and Caring Society.

The tax proposals in the budget are directed towards creating trust, bringing in certainty, attracting investments and in reducing litigation. The Finance Minister called late Shri Arun Jaitley as chief architect of structural reform in the form of Goods and Services Tax.

Futher, she added that during the phase of maturing, GST did face certain challenges and that was natural as transition was daunting. GST Council has been proactive in resolving issues during transition. In the last two years, more than 60 lakh new taxpayers has filed a total of about 40 crore returns. 800 crore invoices were uploaded and 105 crore e-way bills were generated.

On the indirect tax front, the development of an ecosystem for availing online refund of duties will provide relief to the exporters. Implementation of simplified return and e-invoicing from the 1st April, 2020 would reduce compliance and brings tranparency and certainity. Besides, a rejig of customs duty has been proposed, with import duties on medical devices, footwear, furniture and commercial vehicles are set to be increased, and duty on road infrastructure related items to be reduced.

To provide benefits to Exporters, the Finance Minister in the budget speech announced the following incentives. However, this incentive schemes are only part of the budget speech and no provisions has been laid down in the Finance Bill.

- To digitally refund to exporters, duties and taxes levied at the Central, State and local levels, such as electricity duties and VAT on fuel used for transportation, which are not getting exempted or refunded under any other existing mechanism.

- To achieve higher export credit disbursement, a new scheme, NIRVIK is being launched, which provides for higher insurance coverage, reduction in premium for small exporters and simplified procedure for claim settlements.

We have summarized below the key takeaways of Indirect Tax.

Section 1 - Goods and Service Tax

1. Input Tax Credit allowed on debit notes based on date of issuance

The time-limit for availing ITC in respect of debit note is proposed to be de-linked with the date of issuance of original invoice and hence, the taxpayer can avail ITC for debit notes without considering the time limit restriction for original invoice.

2. Stringment measures to curb fake availment of Input Tax Credit

In order to prevent the fake availment of ITC, a new Sub section 1A is proposed to inserted under Section 122 of Central Goods and Services Tax Act, 2017 ("CGST Act") to penalize not only the person who committed such offence but also the persons who have benefited from the specified contravention and at whose instance the specified contravention is undertaken. **A penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on shall be levied**. Specified contraventions are

a) Supply of any goods or services or both without issue of any invoice or issue of an incorrect or false invoice;

b) Issuing any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

c) Takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

d) Takes or distributes input tax credit in contravention of section 20 (Input service distributor), or the rules made thereunder;

Further Section 132 of CGST Act, 2017 is also proposed to be amemded to provide for pushiment for certain offences not only for the person who commits the offences but also the causes to commit and retain the benefits arising out of any of the offences mentioned u/s 132(1). In addition to this, the offence of fraudulent availment of input tax credit without an invoice or bill a cognizable and non-bailable offence.

3. Transitional Credit

Section 140 of CGST Act has been retrospectively amendmended with effect from 1 July 2017 to prescribe the manner and time limit for taking transitional credit. This is to overcome the plethora of High Court Rulings wherein it was held that in the absence of any time period prescribed under Section 140 of the CGST Act and with the introduction of Rule 117(1A) & Rule 120A of CGST Rules, it indicates that there is no intention of the Government to deny carry forward of unutilized credit of duty/tax already paid on the ground of time limit. To nullify this, a retrospective amendment is made in section 140 and the words "within such time" has been inserted in the relevant sub clauses.

4. Composition Scheme

Section 10(2) of CGST Act is proposed to be amended to provide that Composition Levy scheme is not available to a registered person who is engaged in making supply of services not leviable to tax under GST, inter-state supply of services, supply of services through an electronic commerce operator who is required to collect tax under Section 52.

This amendment is required because supply of service were also made eligible for composition scheme to the extent of 10% of turnover or Rs. 10 lakhs, whichever is higher. However, corresponding amendment in section 10 was not done to extend the above-mentioned restrictions to these services.

5. Registration Procedure

- Section 29(1)(c) of CGST Act is proposed to be amended to provide for cancellation of registration for the person who have taken registration volountaryly under GST Act either by the proper officer on his own motion or application filed by such person. Ealier, Section 29(1)(c) specifically exlcudes such classes of person.

- Section 30(1) of CGST Act is proposed to be amended to extend the timeline for Revocation of cancellation of registration. The timeline may be extended by the Additional Commissioner or Joint Commissioner for 30 more days and this may further be extended by Commissioner for a period not exceeding 30 days on sufficient cause being shown and for reasons recorded in writing. Ealier, the time-limit of only 30 days to apply for revocation of the cancellation of registration is provided under GST Act.

6. Other Miscellensous Changes

a) Ladakh is specifically included in the definition of Union territory and also enabling provisions for setting up an Appellate Tribunal in Jammu and Kashmir and Ladakh is proposed

b) Retrospective Amendment in Clause 4 to Schedule II of CGST Act to provide only the transfer of business assets with consideration. The word no consideration is removed.

c) Enabling provision under GST Act to notify separate categories of services or supplies for which the tax invoices shall be issued within the time and manner

d) Time limit for passing the order for removal of difficulties in implementation of GST is proposed to be extended upto 5 years from existing 3 years.

e) Restrospective restriction for supplier of tabacco products from claiming refund under inverted duty structure w.e.f. 01st July 2017 is proposed

f) Late Fees applicable for non-issuance of TDS certificate by the deductor has been removed

Section 2 – Customs Act

1. Prohibition of import or export of goods in specified cases

Section 11(2)(f) of Customs Act is proposed to be amended to include any other goods. The ambit of prohibition of goods for prevention of injury to the economy of the country because of uncontrolled import or export of goods has now been extended to "any other goods." Earlier, this prohibition was limited to the import of gold and silver.

2. Electronic Duty Ledger

Chapter VIIA of the Customs Act is prposed to be amended to include electronic duty credit ledger. Electronic duty ledger in the Customs system is created to extend duty credit instead of remission for exports and other cases of financial benefit. The ledger can be used by the person to whom it is issued or by transferee subject to conditions. Ealier, the Chapter VIIA of the Customs Act, includes cash ledger only. Now, after the amendment, any duty, interest, penalty, fees or any other sum payable under the provisions of Customs Act or Customs Tariff Act or under any other law, can be paid through electronic duty ledger also.

3. Power of Recovery

Section 28AAA of the Customs Act is proposed to be amended to extend recovery power to include newly added Electronic Duty Credit Ledger under Section 51B of the Customs Act. Further, the power has also been extended to initiate recovery procedings on instruments obtained under any law, or under any scheme of the Central Government, in addition to the FTDR.

4. Free Trade Agreements

The Government has proposed stringent measures in order to curb rampant misuse use of Free Trade Agreements (FTA) and non-compliance with the value addition requirements. The Hon'ble Finance Minster in the Budget speech mentions that *"It has been observed that imports under Free Trade Agreements (FTAs) are on the rise. Undue claims of FTA benefits have posed threat to domestic industry. Such imports require stringent checks. In this context, suitable provisions are being incorporated in the Customs Act. In the coming months we shall review Rules of Origin requirements, particularly for certain sensitive items, so as ensure that*

FTAs are aligned to the conscious direction of our policy. Considering this, a new Chapter VAA (a new section 28DA in the Customs Act) is proposed to be inserted to procedure regarding claim of preferential rate of duty.

5. Healh Cess

Section 139 of the Finance Bill, 2020 provides that there shall be levied and collected, a duty of customs, to be called the Health Cess, on the goods specified in the Fourth Schedule being imported into India at the rate specified in the the said Schedule. The Hon'ble Finance Minister proposed to impose a nominal health cess, by way of a duty of customs, on the imports of medical equipment keeping in view that these goods are now being made significantly in India. The proceed from this cess is used for creating infrastructure for health services in the aspirational districts.

The Fourth schedule lists down the goods covered under health cess and rate of duty -

Description of goods	***Rate of Duty***
All goods falling under heading 9018, 9019, 9020, 9021 and 9022 of the First Schedule to the Customs Tariff Act, 1975	*5%*

The said health cess is in addition to any other duties of customs chargeable on import of goods under Customs Act, 1962. It shall be computed on the transaction value as per section 14 of the Customs Act. It shall not be applicable to devices which are exempt from Basic Customs duty including Free Trade Agreements. Notification No.08/2020-Customs dated February 02,2020 provides exemption from levy of Health cess on certain goods. Further, it cannot be paid using duty credit scrip. The said levy is effect from February 02, 2020.

Section 3 - Key Rate Changes

- Increase in Basic Customs Duty on importation for Footwear, Electric Vehicles in CKD or SKD, Electronic Goods, Household appliances, parts of the mobile phones etc.
- Exemption from Social Welfare Surcharge (SWS) for the products such as Marbles tiles, alabasters, commercial vehicle including electric vehicle if imported or CBU etc.
- Withdrawn of outdated exemption notifications and review is proposed for remaining notifications by September 2020 for taking a view on their relevance.
- Withdrawal of exemption from SWS for various items.

BUDGET 2020 - BRICKBATS

- Compiled by CA P.Ramasamy

Times of India, Jan 07, 2020

1. Shareholding norm tweak for listed cos

Sitharaman said the govt would consider raising minimum public shareholding in the listed firms to 35% from 25% at present.

Analysts say many MNCs listed on Indian bourses may consider delisting, if increase public shareholding is implemented. In case of many midcap and small-cap stocks it was better to have more promoter skin in the game since India's capital market is in a developing phase, said Amar Ambani of YES Securities.

2. Corporate tax

Under a phased reduction plan for corporate taxes, the budget proposed to bring under 25% tax ambit companies with an annual turnover of up to Rs 400 crore, in place of the earlier cap of Rs 250 crore.

The move came under criticism from experts who said the tax rejig should have been applicable to all companies and not just a select section.

It is a bad sign that something that the government had promised for five years has not come about even in the sixth year, Swaminathan Aiyar said.

3. Defence

The budget turned out to be big damp squib for the armed forces. At a time when India's security risks are at an all-time high, no specific mention of the forces came as a major dampener for both the forces and the country at large.

4. Jobs

At the season of serious job woes for the country, Sitharaman's budget disappointed one and all as no move was announced to ease one of India's biggest pain points.

5. Tax dampener

Standard deduction and TDS threshold didn't find a mention in Sitharaman's budget. It came as dampener for the salaried taxpayer because Piyush Goyal had promised to hike these limits in his February interim budget.

6. LTCG remains a pain in the neck

If there was one factor that riled investors no end, it was Jaitley's LTCG tax on equities. There were hopes in some quarters that Sitharaman's budget could do something to address the issue. Well, it didn't.

7. Super-rich have bad news

For the wealthy, Sitharaman's budget was a big blow. The finance minister shunned the wealth tax, but increased the surcharge for the rich, proposing to increase the surcharge for those earning Rs 2-5 cr 3 per cent and for those earnings above Rs 5 cr to 7 per cent.

"The government is increasingly making the economy uncompetitive with neighbours with high levels of corporate tax and income tax. Expect more Indians to disappear to low-tax land," said Aiyar.

8. Fuel bill

In a blow to owners of cars and bikes, Sitharaman proposed to increase Special Additional Excise duty and Road and Infrastructure Cess each by one rupee a litre on petrol and diesel.

9. Raiding the RBI

Sitharaman said the government expects higher dividend pay-out from the Reserve Bank of India, bringing a contentious issue back into focus.

Budget ignores Kerala's legitimate needs: Pinarayi Vijayan (Kerala Chief Minister) - ***The Hindu, 01.02.2020***

- slammed the **union budget,** saying that it would neither help strengthen the economy nor ensure social security or development, but only further increase inflation and unemployment in the country.
- All the legitimate needs of the southern State were completely ignored in the budget, though Kerala had submitted a detailed memorandum on its long pending demands, Mr. Vijayan said.
- "Kerala had put forward a slew of demands, including the Angamali-Sabari railway line, raising rubber subsidy, granting of AIIMS, accelerating the development of national highways, increasing the number of attaches in embassies in the Gulf countries, rehabilitation of expatriates and so on,"

- It was only last month that Kerala had been denied deserved natural disaster relief though it was one of the worst flood hit States in recent times.

- In the case of Kerala, the same "political mindset" was reflected in the budget also, he said.The budget, which comprises proposals to sell more Public Sector Undertakings, has not provided enough funds for the survival of PSUs like the Cochin Shipyard and Kochi refinery in the State.

- The Centre, which is constantly denying States their rightful share in the matter of GST, was now trying to 'grab' their rights in agriculture and land sectors, going against the federal principles.

- It was also interesting to note that the union budget had no serious mention about the Rural Employment Guarantee Scheme.

'**Budget didn't meet auto industry expectations' -** ***The Hindu, 01.02.2020***

Rajan Wadhera, President, Society of Indian Automobile Manufacturers (SIAM):

"The Indian automobile industry was looking forward to some direct benefits in the budget, which could have helped in reviving demand in the context of the current slowdown and huge investments made by the Industry for transition to BS-6 and from that aspect, the Budget speech was not what we were expecting.

"On behalf of the automobile industry, SIAM had made specific recommendations on steps that could revive demand like an Incentive based vehicle scrappage scheme; budget allocation for diesel buses procurement by STUs and NIL customs duty for lithium ion batteries, doesn't seem to have been considered, although we are yet to go through all the fine prints.

"The increase in customs duty for CKDs and SKDs of electric vehicles and CBUs of Commercial vehicles however are positive steps for Make in India. The announcements made with respect to rural economy and infrastructural development are some positives and we are hopeful to see quick execution on ground, since it can act as an enabler for increased economic activity and hence increase in vehicle demand."

Congress Leader P. Chidambaram

- the "government has given up on reviving economy". Also, with reference to the budget allocation for Jammu & Kashmir and Ladakh, Chidambaram also said that money can't replace freedom.

- "There were multiple themes, segments and programmes, leaving the listener dazed and confused. It was a laundry list of old (that is current) programmes... The government has given up on reviving the economy or accelerating the growth rate or promoting private investment or increasing efficiency or creating jobs or winning a greater share of world trade."

- "The Indian economy is demand-constrained and investment-starved. The FM has not acknowledged these two challenges, and that is a pity," he said, adding that the government was "in complete denial that the economy faces a grave macro economic challenge and the growth rate has declined in six successive quarters."

- "There is nothing in the Budget that leads us to believe that growth will revive in 2020-21. The claim of 6-6.5% growth next year is astonishing and even irresponsible,"

- he lashed out at the government for adhering to protectionist policies. However, he also criticised it for reducing food, fertiliser and petroleum subsidies.

- "It appears that the people will not get any relief on the price front. Please remember that CPI inflation is over 7% and food inflation is over 10%," he said, adding there is no assurance that the finance minister will meet the targets set for 2020-21.

- He also said that the government rejected every reform idea contained in the Economic Survey. "Did the FM read the Economic Survey? Was the chief economic adviser privy to the contents of the Budget speech? I think the answer to both questions is in the negative."

Congress Leader Rahul Gandhi

- criticized the budget for not providing any real solution to solve the unemployment issue. "Our youth want jobs. Instead they got the longest budget speech in parliamentary history that said absolutely nothing of consequence. PM

& FM both looked like they have absolutely no clue what to do next." He said there was no central idea to rid India of unemployment or improve the poor state of the economy.

Congress Leader Manmohan Singh

- the Budget was "too long to absorb".

Sitaram Yechury of CPI(M)

- the budget does nothing to rid "people's miseries".
- Calling the government "clueless" about how to address the current economic crisis, the Communist Party of India (Marxist) said, "...the Modi Government is only interested in providing the corporate sector and the wealthy relief rather than tackling the increasingly grim employment and livelihood situations of the working people – workers, farmers and those forced into self-employment – which is the root cause of the slowdown."
- Instead of increasing its social spending to address the demand crunch, the Budget "reducing the fiscal deficit by further slashing government expenditures...the burden of which will be felt by working people."

Mamata Banerjee (Trinamool Congress)

- "shocked and appalled" with the governments plan related to the heritage of the country.

Derek O Brien (Trinamool Congress)

- the Budget "takes this country from economic crisis to economic disaster, from the ICU to the ventilator." He called out the government for putting a cess on health even as there were no relief measures for the poor and unemployed. He said even at the time of such high unemployment rate, funds for MGNREGS was slashed by 13%.

  He also lashed out at the government's proposals to indirectly privatise BSNL and LIC. "More importantly, the LIC sale would be used to compensate the states on GST. What's going on," he asked. He also criticised the government's move to remove at least 70 exemptions that people used to save income tax.

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RECENT JUDGMENTS IN VAT CST GST

C form : Assessing Authorities, of the view that in respect of issuing of C form for the purchase of High Speed Diesel from the suppliers in other States based on the recent judgment dated 26.10.2018 passed by the Hon'ble Madras High Court in the case of M/s. Ramco Cements Ltd & Others in W.P.Nos. 19458/2018 to 19460/2018 and the batch of cases can be extended only to those dealers that are party to the decision. This court held that this stand is unacceptable in so far as the decision of this Court as well as other High Courts, one of which has been confirmed by the Supreme Court, are decisions in rem, applicable to all dealers that seek benefit thereunder, of course, in accordance with law. **M/s.Sri Ganesshmurugan Blue Metals, Karur 639 206.Vs.The Assistant Commissioner (ST), Karur (West) (C) Assessment Circle. Writ Petition No.35077 of 2019 DATED: 18.12.2019**

Mismatch: The mismatch issue of purchase transactions reflected in the annexures to the returns of turnover filed by the petitioner and those reflected in the annexures of the selling dealers is covered by an order of a Division Bench in the case of The Asst. Commissioner (CT) V. M/s.Althaf Shoes (P) Ltd. (W.A.Nos.1367 and 1368 of 2016 dated 10.11.2016) and an order of the learned Single Judge in the

CA. V.V. SAMPATHKUMAR

case of M/s.JKM Graphics Solution Private Limited Vs. Commercial Tax Officer (99 VST 343). **Sri Vinayaka Agency Coimbatore Vs The State Tax Officer, Perur Circle, Coimbatore. W.P. Nos.35241 and 35242 of 2019 DATED: 19.12.2019**

Personal Hearing ; Regarding the personal hearing aspect of the matter, impugned orders are silent. The impugned orders do not mention that an opportunity of personal hearing was given and the writ petitioner has not availed the same. As the impugned orders are silent on the same, the same cannot be improved by way of counter affidavit. There is no other material before this Court to demonstrate that notice regarding personal hearing has been sent to the writ petitioner and the writ petitioner has not availed the same. More importantly, as rightly pointed out by learned counsel for writ petitioner, even in the counter affidavit there is no mention about the date, time and venue on which the personal hearing was fixed.

It merely refers to a service of communication sent to the writ petitioner (receipt of which in any event is disputed by the writ petitioner). This takes the Court to grant of personal hearing aspect of the matter and remanded the matter with directions. **East Coast Constructions & Industries Limited Chennai 600 006.Vs Assistant Commissioner (ST) Nungambakkam Assessment Circle, Chennai 600031.W.P.Nos.3079... DATED :25.06.2019**

Opportunity: Orders of assessment passed earlier for the same period, both dated 14.05.2015, were the subject matter of challenge in W.P.(MD)Nos.9803 and 9804 of 2015 and this Court, by order dated 15.11.2018, had set aside the assessments on the ground of violation of natural justice, remitting the matters to the file of the respondent for finalization afresh. The respondent was directed to issue notice afresh to the petitioner and conclude the assessments after extending reasonable opportunity. Pursuant to the aforesaid order, notice to the petitioner appears to have been issued by the assessing authority on 18.03.2019 without any response form the assessee. The Assessing Officer has, in the aforesaid circumstances, merely completed the assessments based upon details of transactions reported by third party dealers as the esssesee not filed any returns. No response was there from petitioner due to the accident of the Assessee and was under medical treatment and hence this Court of the view that the petitioner should be afforded one opportunity to set things in order. Stating so, the impugned orders of assessment are thus set aside with certain directions. **Vijay Industries Vs.The Assistant Commissioner, Palani. W.P(MD).Nos.14259 and 14260 of 2019 DATED : 26.06.2019**

Writ petition: Summons were issued to the petitioner firm and this was also followed by a pre-assessment notice. Petitioner did not respond to the summons as well as the pre-assessment notice. All that is submitted before this Court is that one of the partners of the petitioner firm was indisposed / hospitalised and the records could not be produced owing to this reason. The petitioner had not even sent a reply seeking time citing illness one and half years' time has taken/time that elapsed in the process of summons being issued and pre—assessment notice (which did not evoke a reply from the writ petitioner). This writ petition has been filed after one year later of receipt of impugned proceedings. All these are facts which leaves this Court to believe that the petitioner has been recalcitrant with regard to the proceedings which have culminated in the impugned order. Petitioner not having responded to the summons as well as the pre-assessment notice, now cannot have the impugned order assailed after one year in the instant writ petition, more so when one and half

years have been subsumed in summons and pre-assessment notice being issued for which admittedly there was no response from the petitioner. **Sri Balaji Traders vs. The Assistant Commissioner (CT) (FAC) Cuddalore (Town) Assessment Circle W.P.No.14602 of 2019 Dated: 04.06.2019**

Form I filed later: Forms submitted post assessment can also be taken into account and there can be revision of earier assessment vide the ratio of the judgment of the Hon'ble Division Bench of this Court in, M/s East Coast Bearings Vs. Commercial Tax Officer II dated 05.03.2018 made in Tax Case (Revision)Nos.19 to 22 of 2018, relying on a Full Bench judgment of this Court, namely State of Tamil Nadu Vs. Arul Murugan reported in 51 STC 381(FB). Hon'ble Division Bench judgment of this Court in M/s East Coast Bearings case has also relied on principles laid down by Hon'ble Supreme Court in several judgments including State of H.P., and others v. Gujarat Ambuja Cement Ltd., and another reported in 142 STC 1 (SC). Hence, the Court ruled that the ratio in East Coast Bearings case which pertains to Form C, is also applicable to Form I. when it was submitted that Form C pertains to concessional rate of tax, whereas Form I pertains to exemption. **Schneider Electric IT Business India Private Limited Vs State Tax Officer, Adyar Assessment Circle, W.P.No.10681 of 2019 DATED : 04.06.2019**

C form : Appellant contended that if a direction is issued to consider the Form "C" declaration and the Assessing Officer accepts the same, substantial amount of liability as quantified in the assessment order will be reduced. In fact, the appellant is willing to file an appeal before the First Appellate Authority with regard to the other issues. As the Court cannot exercise such a discretion in the matter, since the contention of the appellant regarding his entitlement to avail the benefit of concessional rate of tax by filing Form"C" declaration requires to be decided by going into veracity of the documents produced by the appellant. What is required to be examined is as to whether in spite of the tripartite agreement between the parties and the names of the parties shown in the invoices, was the Assessing Officer justified in solely relying upon the endorsement "Self" in the column "assessee name and address." For the above reasons, while affirming the order passed earlier by the learned Single Bench, directed the appellant to go before the Appellate Authority. The Appellate Authority to independently pass an order after all the documents are produced by the appellant and then consider the nature of transaction and if satisfied, extend the benefit of the Form "C" declaration which has been filed by the appellant. The appellant is directed to file Statutory appeal within a period of four weeks from the date of

receipt of copy of this order, till such time, the respondent shall not initiate any coercive action for recovery of the tax and penalty as quantified in the assessment orders. The appellant is entitled to raise all points before the Appellate Authority including the legal submissions which were canvassed before us. **Tvl.SPX Thermal Equipment and Services India Pvt. Ltd., vs The Assistant Commissioner (CT), Vallurvarkottam Assessment Circle, Writ Appeal No. 2813 of 2018 DATED :04.04.2019**

Alternative Remedy: The learned counsel for the appellant has vehemently contended that equal time addition is totally unwarranted. In support of her contention and relied upon the decisions in the cases of reported in 58 VST 535, 42 VST 166,(2015) 79 VST 137, 38 STC 382 and 44 STC 299]. Further argued that the Assessing Officer did not independently consider the materials placed by the appellant before him and therefore, abdicated his statutory powers as an Assessing Officer. By placing reliance on the decisions in the cases of reported in (2015) 81 VST 560] and reported in (2006) 146 STC 642], it is submitted that when the Assessing Officer, who is a quasi-judicial Authority failed to exercise his quasi-judicial function of completing the assessment, such assessment orders are liable to be struck down. Furthermore, the learned counsel has relied upon a circular, in which, certain guidelines have been laid down to be followed by the Assessing Officer as to under what circumstances, equal time addition can be made. After hearing all, the Court held that all the above aspects of the issues can be raised before the Appellate Authority and held that that there is no error in the order passed by the learned Single Judge for alternative remedy. **M/s.Sridhar and Co., Vs The State Tax Officer, Ambur, Assessment Circle Ambur, Writ Appeal No.1431 of 2019 Dated : 24.4.2019**

Stay Order modification: Taking into account the position that the petitioner has remitted 25% the tax component as directed by the first appellate authority in stay order, the petitioner is permitted to furnish a personal bond in respect of the balance of tax of 50% of the disputed tax and penalty within a period of one week from date of receipt of a copy of this order. Upon compliance of this order the attachment of the Bank Accounts shall stand lifted forthwith. **M/s.Veekay Diamants vs.The Assistant Commissioner, Peddunaickentpet Assessment Circle, Chennai 600 001. WP. No.10660 of 2019 DATED : 12.04.2019**

Opportunity of personal hearing: The petitioner assails the assessment on the short point of violation of principles of natural justice. He points out that the revised notice issued to the dealer was

received by him on 20.08.2018 and by letter dated 03.09.2018, the petitioner sought time till 30.09.2018 to make his submissions in response to the notice. Though, a copy of letter dated 03.09.218 is available at page no.51 of the paper book. Records produced by the respondent do not contain the aforesaid letter and there is no acknowledgement of the receipt of the same. As the respondent does not raise any serious objection to give the petitioner the benefit of doubt in the matter and affording one more opportunity of personal hearing the Court for the facts and in the interest of justice, the impugned order of assessment is set aside. The petitioner will appear before the AO on 30.04.2019 at 10.30 a.m., along with objections and materials in support of the proposals in the revised notice and the assessment shall be completed within a period of four weeks from the date of conclusion of personal hearing after affording an opportunity to the petitioner. **Tvl. Sri Someswara Electricals, Krishnagiri Post Vs.The Assistant Commissioner (ST), Krishnagiri Assessment Circle, W.P.No.33569 of 2018 DATED: 10.04.2019**

Application of Mind: The impugned assessment orders were passed after issuing notice of proposal to the petitioner. The petitioner objected to the proposal by giving a detailed reply. Though the Assessing Officer has chosen to extract entire reply / objection in the assessment order, unfortunately he has not chosen to discuss any of those objections as to how they are not sustainable. In other words, the AO has not at all discussed the merits of the objection and on the other hand, by a single line observation that the assessee has not maintained accounts correctly and completely, the AO has rejected the objection and concluded the assessment. The AO has also imposed penalty on the petitioner under Section 27(3) of the TNVAT Act. The Court held that the orders of assessment passed without application of mind to the objections raised and without affording an opportunity of hearing cannot be sustained, as it only shows that the AO has made such assessment orders with non-application of mind and in violation of the principles of natural justice and set aside the order and remitted it back to the AO with directions. **Gagan Media Private Ltd., Chennai 600 017 Vs The State Tax Officer, Pondy Bazar Assessment Circle, Chennai 600 028. W.P.Nos.1366, 1369, 1371 & 1372 of 2019 DATED: 22.01.2019**

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CASE LAWS - GST / SERVICE TAX

1. GST– ADVANCE RULING – SUPPLY OF ELECTRICITY - THROUGH GRID AS WELL AS THROUGH DG SETS – ELECTRICITY SUPPLY TO THE EXTENT SUPPLIED THROUGH DG SET IS LIABLE TO @ 18%

CA. VIJAY ANAND

In RE: Keysight Technologies International India Pvt. Ltd. 2020 (32) G.S.T.L. 126 (A.A.R. – GST - Haryana), the applicant is a 100% Export Oriented Unit under STP Scheme for development of computer software / IT Enabled Services. The applicant exports its services to its customers located outside India. Such activities of the applicant qualify as export of services.

M/s. Agilent Technologies (International) Private Limited (for short 'Agilent') is owner of a premises located at CP-11, Sector-8 Technology Park, IMT Manesar, Gurgaon, Haryana-122051. The applicant has entered into a Lease Agreement with Agilent on 15-7-2014 for renting out a part of the said premises. Apart from identified areas in the building, the applicant is also entitled to use the specified common areas, which are to be managed by Agilent only. Further, the applicant has entered into 'Utilities & Services Agreement' with Agilent on 25-8-2014, whereby Agilent has agreed to provide various utilities and services to the applicant such as utilities at common area, facility management, technical services, landscaping, window cleaning, parking lot maintenance, pest control, trash removal, toilet supplies and cleaning, conference room set up, Government charges, waste water treatment, elevators, medical room, upkeep of gym, HVAC, etc.

Under the said agreement, Agilent has also agreed to supply electricity to the applicant and applicant has agreed to pay Agilent based on number of electrical units supplied as indicated by the meter(s) installed for the leased premises in the formula as provided in the agreement.

Agilent has been charging CGST and SGST 9% each on the supply of renting services and electricity made by it to

the applicant. An application was filed seeking advance ruling as to the following:-

a. Whether the supply of electricity is a supply of goods or service?

b. Whether the supply of electricity through grid and supply of utilities are separate supplies or composite supplies?

c. If the supply of electricity and supply of utilities / leasing are separate supplies, what is the classification of the supply of electricity for the purpose of payment of GST?

d. Whether the applicant is eligible to take credit of input tax charged on such supply of renting services and electricity services, if any?

The authority observed as under:

1. The applicant has produced two types of sample tax invoices raised by the Agilent Technologies wherein Goods and Services Tax has been charged at 18% in both the invoices. The HSN / SAC Code mentioned in one of the Tax Invoice is 9972 12 for supply of renting services and 9972 21 for supply of electricity in other. However, the description of services mentioned in both of these sample invoices is Sundry Services.

2. Sale or consumption of electricity is a State subject mentioned at Serial No. 53 of List II of Seventh Schedule to the Constitution of India under Article 246 of the Indian Constitution. This position has not been altered by the 101st Constitution Amendment Act, 2016 and therefore, electricity remains outside the purview of the GST.

3. Entry No. 104 of Notification No. 2/ 2017-Central Tax (Rate), dated 28th June, 2017 pertains to Electrical Energy, the intra-State supply of which is exempted under the GST Act. This suggests that Electrical Energy is a goods and not a service. There is also no doubt that electricity and electrical energy are one and the same thing.

4. It is therefore, clear that electricity is a goods and not a service.

5. The power backup provided by the Agilent Technologies i.e., the lessee is in the form of a service. The charges for this supply are determined by the lessee as per its convenience. The DG set belongs to the Agilent Technologies, the maintenance charges are also borne by the Agilent Technologies, the expenses record pertaining to the DG set is also maintained by Agilent Technologies. Therefore, the provision of electricity supply / power back-up via DG set is in the form of a service and not goods.

6. In this manner, the electrical supply is liable to GST to the extent it is supplied through DG set.

7. W.r.t. whether the supply of electricity and supply of utilities/leasing are separate supplies or composite supplies. Section 2(30) of GST Act defines composite supply as "a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which ore naturally bundled and supplied in conjunction with each other in the ordinary course of business,, one of which is a principal supply".

8. In the instant case, the supply is made by a taxable person and the number of supplies are also multiple. But, the supply of electricity to the extent of it being supplied through grid is exempt from GST and, therefore, the condition of two or more taxable supplies is not satisfied. Further, the supply of utilities and supply of electricity are neither naturally bundled together nor are they supplied in conjunction with each other. Also, neither of the two supplies i.e. utility services and electricity supply can be termed as a principal supply and the other one being a natural ancillary.

9. The provision of electric supply by way of DG set forms part of the utility services taxable at 18% whereas the supply of electricity by way of grid is exempt from GST. It is understood that renting of business premises is indispensable for carrying any business, no matter how small the scale is. It is also admitted that renting of business premises is in the course or furtherance of business as space is required for carrying out the operations relating to business.

10. Regarding input tax credit with respect to electricity supply, it is observed that since the grid supplied electricity is exempt from GST, the issue of credit availability does not arise. As regards, the tax on supply of electricity through DG set, the applicant is entitled to credit of input tax paid with respect to tax paid on availing the said service.

Hence, the authority ruled as under:

(a) The supply of electricity, to the extent it is grid supplied, is goods.

(b) The supply of electricity through grid and supply of utilities are separate supplies.

(c) The supply of electricity through grid is classified under Entry No. 104 of Notification No. 2/2017-Central Tax (Rate), dated 28th June, 2017, Tariff Code-2716 00 00.

(d) The applicant is eligible to take input tax credit on supply of renting services. Input tax credit in case of electricity supply shall be restricted to the supply made through DG sets.

2. GST– ADVANCE RULING - A ONE TIME CONSOLIDATED FEE CHARGED BY A SPECIALIZED ADOPTION AGENCY UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – EXEMPT

In RE: Children of the World India Trust 2020 (32) G.S.T.L. 193 (A.A.R. – GST –Mah.), the applicant is a charitable trust registered under Section 12 AA of the Income Tax Act, 1961 (IT Act) and is strictly regulated by the Government of India under the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) read with The Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (JJ Rules) as well as The Adoption Regulations, 2017. The applicant is registered as a "Specialized Adoption Agency" ("The SAA") as defined in section 2(57) of the JJ Act and is an institution recognized under Section 65 of the said Act, for housing orphans abandoned and surrendered children placed there by order of the Committee for the purpose of adoption. Every aspect of their activity is controlled and processed by the Government through its organ, namely, the Central Adoption Resource Agency (CARA) established by the Government under Section 68 of the JJ Act.

The applicant has established a shelter, namely, "Vishwa Balak Kendra", in their own building and provide shelter, food, clothing, healthcare, foster care and basic education to abandoned, orphaned or homeless children below 6 years of age till the time of adoption. An application was filed seeking advance ruling as to whether their activities conducted are the "Charitable Activities" that are exempted under the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended and consequently, the receipt of the Adoption Fees paid under Regulation 46 of the Adoption Regulations, 2017 by the Prospective Adoptive Parents to the Trust is exempted from the levy of GST.

The authority observed as under:

1. The activities of the applicant which are in the nature of "Charitable Activities", also consists of advancement of educational programmes or skill development

relating to abandoned, orphaned or homeless children. Such activities are clearly covered under Sr. No. 1 of Notification No.12/2017- C.T. (Rate) dated 28.06.2017 as amended from time to time and the applicant being an entity registered under Section 12AA of the IT Act, such activities carried out by the applicant are entitled to exemption as mentioned aforesaid.

2. The applicant is a Charitable Trust registered as a "Specialized Adoption Agency" and is an institution recognized under Section 65 of the said Act, for housing orphans abandoned and surrendered children placed there by order of the committee for the purpose of adoption. Every aspect of their activity is controlled and processed by CARA. The applicant does not and cannot take any remuneration, donation or any other amount other than the Adoptions fees paid to them. The Adoption Fees as on the date is affixed amount of Rs. 40,000/- for Intra Country and US$ 5,000/-, in case of Inter-Country Adoption.

3. From the FAQs issued by CARA in their official website cara.nic.in that the adoption fee collected by the institute is strictly in terms of guidelines fixed by the Adoption Regulations, 2017 issued under the JJ Act. As per the Regulations, a Specialized Adoption Agency (SAA) can charge a fee of Rs.40,000 under the head Child Care Corpus from the adoptive parents.

4. The applicant, being a SAA, charges fees of Rs.40,000 as a corpus which in turn is used for shelter, food, clothing, foster care, maintenance, medical treatment and primary education and basic computer skills of these abandoned children/orphans in their Bal Vikas Kendras till the time they are adopted. During the course of the hearing, the applicant produced pictures of children learning alphabets, drawing and interaction with computers in support of their arguments.

5. Arising out of the above, the applicant's activities, including the activity of facilitating the adoption of the children by the Adoptive parents, are in the nature of "Charitable Activities", which also consists of advancement of educational programmes or skill development relating to abandoned, orphaned or homeless children. Such activities are covered under Sr. No. 1 of Notification No.12/2017- C.T. (Rate) dated 28.06.2017 and are exempted by the said notification consequent to which the receipt of the Adoption Fees by the applicant from the Prospective Adoptive Parents to the Trust is exempted from the levy of GST.

Hence, the authority held that the activities conducted by the applicant are "Charitable Activities" which are exempted under Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as amended, including the receipt of the Adoption Fees paid under Regulation 46 of the Adoption Regulations, 2017 by the Prospective Adoptive Parents.

3. GST– ADVANCE RULING – COLLECTION OF EXAMINATION FEE FROM THE STUDENTS AND REMITING THE SAME TO UNIVERSITY – PURE AGENT – NOT TO BE INCLUDED

In RE: Arivu Educational Consultants Pvt. Ltd. 2020 (32) G.S.T.L. 353 (A.A.R.-GST-Kar.) the applicant provides the coaching, learning and training services in relation to under-graduate, graduate and post-graduate degree, diploma and professional courses on a standalone bases to students or for any institution, corporate, company, institutes, universities and colleges in the subject and branches of all types of disciplines such as commerce, hardware, software, computer, science, arts, business management, engineering, medical, industrial, pharmacy, mining, military, dance, acting, sports, journalism and any other field of education and set up of coaching and training classes/centres in relation to the same. In this process the applicant collects certain amount as exam fee from the students and remits the same to the respective institute or college or universities without any profit element. In one such transaction the applicant collects CIMA (Chartered Institute of Management Accountants) exam fee from the students registered with applicant for coaching and remits the exact amount collected to CIMA on behalf of the students. An application was filed seeking advance ruling as to whether the activity of collecting exam fee (charged by any university or institution) from the students and remitting to that particular university or Institution without any value addition to it, amount to taxable service.

The authority observed as under:

1. The applicant provides coaching, learning and training services for which they collect fee for coaching or training classes which attracts GST @18%.

2. In addition, the applicant collects certain amount as exam fee from the students and remits the same to the respective institute or college or universities without any additional charges or profit element. The

applicant makes the payment in bulk on behalf of all students, after collecting the same and then issues invoice to the student for the reimbursement of the payment made on behalf of him. This payment is separately indicated in the invoice issued to the respective students.

3. In one such transaction, applicant collects CIMA (Chartered Institute of Management Accountants) exam fee from the students who registered with applicant for coaching and remit the exact amount collected to CIMA on behalf of the student. For this entire applicant issues invoice to the students mentioning separately the fee collected for the coaching or training classes and fee collected as examination fee.

4. The applicant contends that when they collect fee and make the payment to CIMA on authorization from the student the in such cases the applicant acts as pure agent and applicant collects the exact amount from the student and remit the same to the CIMA without any addition. This payment is separately indicated in the invoice issued to the respective students. The applicant is providing this kind of facility to the student in addition to the services as training and coaching institute.

5. The applicant is collecting the exact amount payable to institute or college or universities as exam fee from the students (service recipient) and remits the same amount to the respective institute or college or universities (third party) without any profit element or additions, on the authorization of the student. This payment is separately indicated in the invoice issued to the respective students. The applicant providing this kind of services to the student in addition to the services as training and coaching institute.

6. Consequently, the applicant satisfies all the conditions of the pure agent as narrated in the Rule 33 of the CGST Rules, 2017. Therefore amount of fee collected by the applicant from the student as exam fee which is remitted to the respective institute or college or universities is excluded from the value of supply.

Hence, the authority ruled that the activity of collecting exam fee (charged by any university or institution) from students and remitting the same to that particular university or institution without any value addition to it is a service as a pure agent and hence the value is excluded from the taxable value of the applicant as per Rule 33 of the Central GST Rules/Karnataka GST Rules.

4. GST – APPELLATE AUTHORITY FOR ADVANCE RULING – SUPPLY OF CRANES TO INTERSTATE CUSTOMERS LEVYING IGST – PAYMENT GENERALLY MADE BY CUSTOMERS TO HO – NO RESTRICTION ON ITC TO THE EXTENT OF PAYMENT OF VALUE TO HO ALONE

In RE: Sanghvi Movers Limited 2020 (32) G.S.T.L 586 (App. A.A.R. – GST - T.N.), the appellant Sanghvi Movers Limited ("SML") is engaged in the business of providing medium-sized heavy-duty cranes on rental/ lease/ hire basis to its clients without transferring the right to use the cranes. SML has pan-India presence and cranes are deployed across India as per the requirements of customers. SML has a large fleet of more than 400 cranes ranging from 40 MT to 80O MT lifting capacity. The cost of these cranes is significantly high and their average economic life ranges from 25 to 35 years. These cranes are moved/ transported on trailers, from one location to another, in knock down condition.

SML has set up various branches ("SML branch offices") across India at strategic locations including Tamil Nadu, to minimize transportation time and costs. Under GST, SML has obtained registration for 10 locations across India, including its head office ("SML Maharashtra") located in Pune, Maharashtra and branch office ("SML Tamil Nadu") located in Chennai, Tamil Nadu. SML branch offices negotiate with customers and receive final work orders from customers. The title and ownership of all the different types of cranes along with their components vest with SML Maharashtra. Therefore, on receipt of the final work order, all the SML branch offices in turn raise internal work orders on SML, Maharashtra to provide requisite cranes on hire charges along with appropriate support and assistance to various customers across India.

In order to comply with the provisions of GST law and ensure operational feasibility, SML Maharashtra has entered into a formal service arrangement with all SML branch offices (including SML Tamil Nadu) by entering into a Memorandum of Understanding (MOU), wherein SML Maharashtra has agreed to provide cranes and crane components to all SML branch offices on hire charges. As part of the service arrangement, whenever the appellant receives a final work order from its customers for providing cranes on hire charges, they

will in turn raise an internal work order on SML Maharashtra for providing the required cranes on hire charges. On receipt of internal work order from the appellant, SML Maharashtra transports the crane and its components to the customer's location project location on the instructions of the appellant. For each type of crane given on hire charges, the crane operator maintains a separate monthly log sheet at the customer/ project location, wherein daily and hourly details of crane usage and idle time are maintained, based on which the monthly service invoice is raised by the appellant on respective customers. Further, an invoice from SML Maharashtra is issued to the appellant and the value considered for levying GST is approximately 95% of the value charged to the customer by the appellant.

SML Maharashtra discharges IGST on the value of hire charges recovered from the appellant treating the same as inter-state supply of service. Consequently, the recipient i.e. the appellant avails credit of IGST charged/paid by SML Maharashtra on the value of hire charges charged on the invoice. The appellant sought the authority for advance ruling in Tamil Nadu to determine the admissibility of ITC of the IGST paid by SML Maharashtra in the hands of the appellant which ruled that the on the supplies received from SML, Maharashtra, the applicant is not eligible for the full Input Tax Credit but only to the extent specified in the restrictions as per second proviso Section 16(2) of CGST Act and Rule 37 of CGST Rules read with Section 20(iv) of IGST Act, subject to fulfillment of all other conditions under section 16 of CGST Act, read with Section 20(iv) of IGST Act. On appeal, 55the appellate authority held as under:

The issue for determination is whether the appellant is eligible for the ITC of the entire tax paid by SML HO in the stated transactions.

1. The Head Office (HO) at Maharashtra is the title holder of all the cranes, which they lease to the appellant, for further sub-lease by the distinct person.

2. The transaction is between distinct persons. The appellant in the tax invoice raised on their customers mentions that the payment to be made either by Cheque/DD in directly to the account of SML HO at Pune. The appellant has represented that the receipts and payables are accounted at

the entity level only. The HO being distinct person in the eyes of law and the transaction is in the course of furtherance of business, the supply is taxable supply for which SML HO has adopted a value agreed under the 'Pricing' clause of the MOU and paid the tax on the value declared in the Invoice.

3. Proviso to Rule 37, provides for deemed payment of value in such transactions. Even considering that the said proviso does not have application in the case at hand as there is a value stated in the Tax Invoice as held by the Lower Authority.

4. There is no reason to restrict the Input Tax Credit of the tax paid by the SML HO, in the hands of the appellant as it has been substantially brought out that the 'consideration' stands paid to the SML HO either by the customer of the Appellant or by setting off against the payables of the appellant to SML HO, in respect of lease/hire of Cranes, etc which is as per the established accounting principles.

5. Therefore we do not find any reason to restrict the eligibility of ITC credit under Section 16 (2) of the Act, in the case at hand.

Hence, the authority ruled that the appellant is eligible to avail ful1 Input tax credit of tax paid by SML HO on the lease/hire of cranes to them for furtherance of business, subject to other conditions of eligibility to such credit as per Section 16 of CGST/TNGST Act 2017.

5. GST – ADVANCE RULING – TRANSACTION BETWEEN A PROJECT OFFICE SET UP IN INDIA AND ITS PARENT OFFICE WITH RESPECT TO EXPAT EMPLOYEES IN INDIA – GST NOT APPLICABLE

In RE: Hitachi Power Europe GmbH 2020 (32) G.S.T.L 804 (A.A.R. – GST - U.P.), Hitachi Power Europe GmbH (hereinafter referred as 'Head Office' or foreign company) is a Company incorporated under the Laws of Germany and has been awarded with contracts for supply of goods and supervisory services by M/s. BGR Boilers Private Limited in relation to Projects of M/s. NTPC Limited, M/s. Meja Urja Nigam Private Limited and M/s. Damodar Valley Corporation being Mega power projects, located in Solapur (Maharashtra), Meja (Uttar Pradesh) and Raghunathpur (West Bengal) respectively.

The Head Office has constituted 3 Project Offices for undertaking onshore portion of the Project in India

and have been permitted to open an office in India to undertake such projects, commonly referred to as "Project Office". For carrying out the projects in India, the Expat employees (employees of the Head Office) would work out from the Project Office in India. As the Project Office is not a separate legal entity and merely an extension of Head Office in India, these Expat employees are employees of Project Office.

An application was filed seeking advance ruling as to whether GST is applicable on the accounting entry made for the purpose of Indian accounting requirements in the books of account of Project Office for salary cost of Expat employees?

The authority held as under:

1. The issue before us to decide is as under:-

a. Whether the transaction between M/s. Hitachi Power Europe GmbH and its project office located at Meja Thermal Power Project, Allahabad is a transaction between same company or a transaction between two distinct legal entities?

b. If the said transaction is an intra-company transaction, whether the amount paid to the expat employees falls under the definition of "Supply" under GST laws or will it fall under Schedule III of the CGST Act, 2017 i.e. "Services by an employee to the employer in the course of or in relation to his employment?"

2. PAN and TAN for the Project Office has been issued by the Income Tax department in the name of the Foreign Company i.e., M/s. Hitachi Power Europe GmbH. Further, they have obtained registration under the Companies Act, 2013, as a "Foreign Company" vide Registration Number F04681, by mentioning the name of the Company as "Hitachi Power Europe GmbH".

3. M/s. BGR Boilers Private Limited has entered into an agreement with the foreign company i.e. M/s. Hitachi Power Europe GmbH and inturn, as per RBI guidelines, the foreign company has opened their project office in India to undertake/complete the contractual obligations.

4. As per the FEMA regulations any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad and the project will be funded directly by inward remittance from abroad. This fact is also verified from the fact that

in the balance sheet of the Project Office, under the shareholder's fund, "Head Office balance" is mentioned, which shows that project office is receiving funds from their head office.

5. W.r.t. the second question, the undisputed facts are as under:-

i) TDS is deducted by the Project Office as an Employer on salaries paid to Expat Employees in accordance with the Income-tax Act, 1961;

ii) Project Office issues Form 16 as an Employer to the Expat Employees;

iii) In the VISA issued by the Indian Bureau of Immigration the organizational name of the expat employees has been written as "Hitachi Power Europe GmbH";

iv) Professional tax is deducted from the salaries of the Expat employees and paid by the Project Office in India.

6. From the foregoing facts, the project office and the head office are single business entity and the project office is acting as an extended arm of the Head Office. Further the project office is fulfilling all the obligations as employer with reference to expat employees and "Employee-Employer relation exist between the project office and expat employees".

7. As per Schedule III of the CGST Act 2017, "the services by an employee to the employer in the course of or in relation to his employment" shall be treated neither as supply of goods nor a supply of service.

8. Accordingly, the service provided by the expat employees to the project office fall under the category of "Services by an employee to the employer in the course of or in relation to his employment" resulting in the non levy of GST on the salary paid to the expat employees and reflected in the books of account of the project office.

Hence, the authority held that no Goods and Services Tax is applicable on the accounting entry made for the purpose of Indian accounting requirement in the books of account of Project Office for salary cost of Expat employees.

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LEARNING SERIES ON MULTILATERAL INSTRUMENT UNDER TAX TREATIES
LS #11: TREATY ENTITLEMENT - PREAMBLE AND ITS RELEVANCE

Objectives

A. Prelude

B. Preamble under the MLI: Minimum Standard

C. Preamble and its relevance for tax treaties

D. Debrief

Mr. SUDARSHAN RANGAN
Advocate
&
CA. VIGNESH KRISHNASWAMY

A Prelude – Treaty Entitlement – Abuse Provisions

- In the previous three learning series, we discussed about measures taken under MLI for tax treaty abuses. The MLI attempts to retain flexibility by providing the countries a template of limited choices to choose from, it also mandates compliance with certain 'minimum standards'. One such minimum standard is Action 6 (aimed at preventing tax treaty abuse). This minimum standard requires

  (i) the inclusion of an express statement in the ***Preamble stating the common intention to eliminate double taxation without creating opportunities for non-taxation or reduce taxation through tax evasion or avoidance, including through treaty shopping arrangements***, and

  (ii) at least a PPT or Principal Purpose Test rule, SLOB etc. , which is the only approach deemed to satisfy the minimum standard by its own.

- Therefore, the MLI under Part III- Treaty Abuse, Article 6 mandates the inclusion of a modified preamble to the tax treaty wherein specifically it targets double non-taxation in other words curbing the use of treaty shopping. It is imperative to note that the modification of preamble is a minimum standard which needs to be adopted by all the parties that are signatory to the MLI and to all its CTA. Exception to minimum standards are only possible when existing treaties have similar provisions. Therefore, reformulation of preamble to tax treaties by virtue of the MLI is a significant amendment which will act as a deterrent for revenue authorities to not entitle a tax treaty for taxpayers who abuses treaty and dodges tax. We will be focussing on this in the current learning series.

B Preamble under the MLI : Minimum Standard

- The Preamble text contemplated in the MLI describes the overall purpose of the Convention to implement tax treaty-related measures produced as part of the Final BEPS Package in a swift, co-ordinated and consistent manner across the network of existing tax treaties without the need to bilaterally renegotiate each such treaty[1].
- Under the MLI, part III- Treaty Abuse, Paragraph 1 of article 6 is to be included in *place of or in the absence of similar preamble language of the Covered Tax Agreement*. Each party must notify OECD of whether each of its Covered Tax Agreements contains Preamble language, and the text of the relevant paragraph. When all contracting parties have made such notification, the Preamble language is to be replaced by the text contained in paragraph 1 of article 6, MLI as follows:
- A Covered Tax Agreement shall be modified to include the following preamble text[2]:

"Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions)

- Further where a party has not notified the specific preamble to a CTA, the above clause will be added to the existing preamble text. For eg. India's position on Article 6, it has been silent and has not made any choice with reference to Article 6 of the MLI. So MLI preamble shall not replace existing preamble language in India's CTA but will be added to the existing preamble text.
- The above preamble notes that the Parties recognise the need to ensure that existing agreements for the avoidance of double taxation on income are interpreted to eliminate double taxation with respect to the taxes covered by those agreements without creating opportunities for nontaxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in those agreements for the indirect benefit of residents of third jurisdictions).
- Paragraph 3 of Article 6 of the MLI has also allows the possibility to include the other part of the preamble of the OECD Model Tax Convention:

"Desiring to further develop their economic relationship and to enhance their co-operation in tax matters"

[1]Para 21, OECD Explanatory statement on MLI

[2]Part III of the MLI - Article 6 titled 'Treaty Abuse'

This in line with India's objective on tax treaties as specified in Section 90 of the ITA and also in line with preamble of tax treaties entered with many countries.

C Preamble and its relevance under tax treaties

- Having seen the preamble being modified to avoid treaty abuses. It is worth mentioning that preamble plays a significant tool for interpretation, as Article 31(2) of the Vienna Convention on Law of Treaties (VCLT) specifically covers preamble as part of the treaty.
- The VCLT ratified by 114 countries[3] provides the basic rules of interpretation of any international agreement. VCLT is a treaty concerning the international law on treaties between states. The VCLT articles are useful in understanding application and interpretation of tax treaties. The major principle under VCLT is **Article 26- Pacta sunt servanda** -Treaty in force is binding upon the parties and it is mandatory to follow the same in good faith. Therefore, on conflict in the application of tax treaties, the guiding principles laid down in the VCLT are applied to give effect to a treaty.
- Another major principle under VCLT is Article 31 which clearly states: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to terms of the treaty in their context and in the light of its object and purpose."

Further **Article 31(2)** of the VCLT for the purpose of interpretation of a treaty it specifies that even the preamble shall be included.

- Tax treaties being international agreements, countries have to respect them. The landmark judgement of the Supreme Court ('SC') in the case of ***Azadi Bachao Andolan***[4]**,** wherein a circular issued by the Central Board of Direct Taxes, India to accept certificates of residence issued by the Mauritian Authorities as final proof of residence of taxpayer without any question was challenged. The moot question was whether India-Mauritius tax treaty was misused by virtue of a mere certificate of residence issued by the Mauritian tax authorities. For which the SC answered in negative and thereby holding that treaty shopping is valid[5]**.**
- The SC has considered the preamble of the India-Mauritius DTAA has one of the factors for its judgement. The relevant text is reproduced below:

[3]India is neither a signatory nor has ratified VCLT. However, Courts in India have embraced the principles of VCLT while interpreting tax matters.

[4]263 ITR 706

[5]Treaty shopping consists of a state which is not a party to a treaty establishing an entity within a state which is a party in order to take advantage of the provisions of that treaty. The simplest example is the establishment of a "conduit company" in a Contracting State to receive income. -Philip Baker

"Based on these observations, counsel for the appellants contended that the preamble of the Indo-Mauritius DTAC recites that it is for the "encouragement of mutual trade and investment" and this aspect of the matter cannot be lost sight of while interpreting the treaty"

- Therefore, in case of ambiguity in the text, then the courts can look at preamble to solve the dispute and more importantly apply the principles of international law based on VCLT for arriving at the interpretation of a tax treaty .

C Debrief

- One need not go and seek global precedence for use of the preamble in tax treaties. The Indian case of Azadi Bachao is a landmark verdict and looked upon by the global community. The Apex Court in Azadi Bachao Andolan (supra) considered the preamble to the India -Mauritius tax treaty inter alia to legalize treaty shopping. It is also worth mentioning here that the Indian Government sanitized the Apex court verdict vide Finance Act 2003 amended by modifying Section 90(1) (a) of the ITA post Azadi Bachao's judgement as:

"(a) for the granting of relief in respect of—

(i) income on which have been paid both income-tax under this Act and income-tax in that country; or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country to promote **mutual economic relations, trade and investment, or…"**

- The above amendment provided huge opportunity for assessees to plan their taxes and in many cases, plan for double non-taxes. Eventually the double tax avoidance agreement paved way of double non-tax avoidance. Thereby enabling base erosion and profit shifting. It is no surprise that the treaty shopping not only enable residents of third country to gain benefit in a bilateral tax treaty, it also enables the residents of the contracting party to misuse a bilateral tax treaty by camouflaging into a resident of a third country and round trip the untaxed, unaccounted money to their home country in a legal manner.

- Therefore, the amendment to preamble through MLI is clearly state that the joint intention of the parties to a tax treaty is to eliminate double taxation without creating opportunities for tax evasion and avoidance, in particular through treaty shopping arrangements. One would need to wait and watch in the future as to whether the reformulation of preamble indeed acts as a deterrent to combat tax evasion.

(The authors are Chennai Based Advocate and Chartered Accountant respectively. They can reached at sudarshan@inbox.com and vignesh.krishnaswamy@outlook.com respectively)

STRICTER REPORTING REGIME COMING SOON FOR AUDITORS

- The Hindu Businessline - Published on January 27, 2020

Move to provide warning signals to regulators of impending disasters in corporates

The Ministry of Corporate Affairs (MCA) is expected to take a major step to revamp the auditor's report that accompanies company balance-sheets, placing more onus on statutory auditors to fulfill their professional responsibilities. The move is expected in February.

Besides overhauling the Companies Auditors Report Order (CARO), the government is also likely to make changes to the secretarial audit reporting that is mandated under the company law, sources said.

The entire effort will be to provide early-warning signals to policy-makers and regulators of impending disasters in corporates, they said.

Indications are that the MCA may even ask statutory auditors to digitally file the new CARO instead of waiting for the auditor report to form part of the annual report.

The aim is to tighten the working of auditors and also push managements to conform to more elaborate disclosures on their state of affairs.

Draft recommendations

Already, an MCA-appointed Group, which was tasked to look into the current CARO and suggest changes, has submitted the draft recommendations to the Corporate Affairs Ministry. The National Financial Reporting Authority — the regulator of the audit profession — is likely to meet this month-end to deliberate on the changes needed to the existing CARO, the sources said.

Once the NFRA firms up its views and conveys them to the MCA, the new CARO is expected to get notified in February, they added.

The audit profession, which had an exceptionally challenging year in 2019, is hoping that unlike in 2016, when CARO was last revised, the Government will give it enough time to conform to the new norms.

In 2019, the audit fraternity came in for severe criticism for its role in the blowout of IL&FS, collapse of Dewan Housing & Finance Ltd, and the crisis at PMC Bank. Several large divergences were also observed in the audited accounts of YES Bank, SBI and other banks. Year 2019 also saw a spate of resignations by both statutory and internal auditors.

AUDITORS GET 90 DAYS TO FILE NFRA - 2 FORM

- The Hindu Businessline - Published on December 11, 2019

The Corporate Affairs Ministry (MCA) has given a breather for statutory auditors who were earlier required to file the NFRA-2 form with the National Financial Reporting Authority (NFRA) by November 30.

It has now allowed the form - which specified the format of the Annual return - to be filed with the new independent audit regulator NFRA within 90 days from the day on which it was published on the website of the Authority.

With December 9 as the date on which form NFRA-2 was published on the Web site, auditors will have time till March 9 to file the form, said experts in the audit fraternity.

Part of the reason for extending the timeline was the fact that NFRA came up with the format very late and closer to the November 30 deadline. As the information sought was quite extensive, more time was required and representations were made to the MCA to extend the last date of filing, sources said.

Commenting on the move to extend the timeline, Ashok Haldia, former Secretary, CA Institute, said that NFRA -2 form is fairly comprehensive asking for details for each of the audit and audit qualifications and unfavourable comments, quality control procedure and quality review etc.

"These being asked for the first time, it is bound to take considerable time and effort. Nature of some of the questions suggest that response there against may be analysed and evaluated by NFRA later for corrective as well as punitive measures," Haldia told BusinessLine.

Amarjit Chopra, former President of the CA Institute, said the MCA move is a right step as adequate time should be given to various firms to furnish the various information. "Its a step in the right direction to provide adequate time to audit firms to furnish information," he said.

It may be recalled that NFRA - now an independent regulator for auditors of listed companies and large unlisted companies, besides banks and insurers - was constituted by the Central Government for enforcement of auditing standards and ensuring the quality of audits, in order to enhance investor and public confidence in financial disclosures of companies.

NFRA also has oversight of electricity firms and those body corporates referred to it by the Centre.

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